

105TH CONGRESS
1ST SESSION

H. R. 5

To amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 7, 1997

Mr. GOODLING (for himself, Mr. RIGGS, Mr. CASTLE, Mr. PETRI, Mr. BALLENGER, Mr. BARRETT of Nebraska, Mr. McKEON, Mr. TALENT, Mr. GREENWOOD, Mr. KNOLLENBERG, Mr. GRAHAM, Mr. SOUDER, Mr. McINTOSH, Mr. NORWOOD, and Mr. CUNNINGHAM) introduced the following bill; which was referred to the Committee on Education and the Workforce

A BILL

To amend the Individuals with Disabilities Education Act, to reauthorize and make improvements to that Act, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “IDEA Improvement
5 Act of 1997”.

1 **TITLE I—AMENDMENTS TO THE**
 2 **INDIVIDUALS WITH DISABIL-**
 3 **ITIES EDUCATION ACT**

4 **SEC. 101. AMENDMENTS TO THE INDIVIDUALS WITH DIS-**
 5 **ABILITIES EDUCATION ACT.**

6 Parts A through D of the Individuals with Disabil-
 7 ities Education Act (20 U.S.C. 1400 et seq.) are amended
 8 to read as follows:

9 **“PART A—GENERAL PROVISIONS**

10 **“SEC. 601. SHORT TITLE; TABLE OF CONTENTS; FINDINGS;**
 11 **PURPOSES.**

12 “(a) SHORT TITLE.—This title may be cited as the
 13 ‘Individuals with Disabilities Education Act’.

14 “(b) TABLE OF CONTENTS.—The table of contents
 15 for this title is as follows:

“PART A—GENERAL PROVISIONS

“Sec. 601. Short title; table of contents; findings; purposes.

“Sec. 602. Definitions.

“Sec. 603. Office of Special Education Programs.

“Sec. 604. Abrogation of State sovereign immunity.

“Sec. 605. Requirements for prescribing regulations.

“Sec. 606. Employment of individuals with disabilities.

“PART B—ASSISTANCE FOR EDUCATION OF ALL CHILDREN WITH
 DISABILITIES

“Sec. 611. Authorization; allotment; use of funds; authorization of appro-
 priations.

“Sec. 612. State requirements.

“Sec. 613. Local educational agency requirements.

“Sec. 614. Evaluations, reevaluations, individualized education programs,
 and educational placements.

“Sec. 615. Procedural safeguards.

“Sec. 616. Withholding and judicial review.

“Sec. 617. Administration.

“Sec. 618. Program information.

“Sec. 619. Preschool grants.

“PART C—INFANTS AND TODDLERS WITH DISABILITIES

“Sec. 631. Findings and policy.
 “Sec. 632. Definitions.
 “Sec. 633. General authority.
 “Sec. 634. Eligibility.
 “Sec. 635. Requirements for statewide system.
 “Sec. 636. Individualized family service plan.
 “Sec. 637. State application and assurances.
 “Sec. 638. Uses of funds.
 “Sec. 639. Procedural safeguards.
 “Sec. 640. Payor of last resort.
 “Sec. 641. State interagency coordinating council.
 “Sec. 642. Federal administration.
 “Sec. 643. Allocation of funds.
 “Sec. 644. Authorization of appropriations.

“PART D—NATIONAL ACTIVITIES TO IMPROVE EDUCATION OF CHILDREN
 WITH DISABILITIES

“Sec. 651. Purpose of part.
 “Sec. 652. Eligibility for financial assistance.
 “Sec. 653. Comprehensive plan.
 “Sec. 654. Peer review.
 “Sec. 655. Eligible applicants.
 “Sec. 656. Applicant and recipient responsibilities.
 “Sec. 657. Indirect costs.
 “Sec. 658. Program evaluation.

“SUBPART 1—NATIONAL RESEARCH AND IMPROVEMENT ACTIVITIES

“Sec. 661. General authority to make awards.
 “Sec. 662. Priorities.
 “Sec. 663. National assessment.
 “Sec. 664. Authorization of appropriations.

“SUBPART 2—PROFESSIONAL DEVELOPMENT

“Sec. 671. Purpose.
 “Sec. 672. Finding.
 “Sec. 673. National activities.
 “Sec. 674. Professional development for personnel serving low-incidence
 populations.
 “Sec. 675. Leadership personnel.
 “Sec. 676. Service obligation.
 “Sec. 677. Outreach.

“SUBPART 3—STATE PROGRAM IMPROVEMENT GRANTS FOR CHILDREN WITH
 DISABILITIES

“Sec. 681. Purpose.
 “Sec. 682. Eligibility and collaborative process.
 “Sec. 683. State improvement plans.
 “Sec. 684. Use of funds.
 “Sec. 685. Minimum State allotments.
 “Sec. 686. Authorization of appropriations.

“SUBPART 4—PARENT TRAINING

“Sec. 691. Grants for parent training and information centers.

“Sec. 692. Technical assistance for parent training and information centers.

“Sec. 693. Authorization of appropriations.

1 “(c) FINDINGS.—The Congress finds the following:

2 “(1) Disability is a natural part of the human
3 experience and in no way diminishes the right of in-
4 dividuals to participate in or contribute to society.
5 Improving educational results for children with dis-
6 abilities is an essential element of our national policy
7 of ensuring equality of opportunity, full participa-
8 tion, independent living, and economic self-suffi-
9 ciency for individuals with disabilities.

10 “(2) Before the date of the enactment of the
11 Education for All Handicapped Children Act of
12 1975 (Public Law 94–142)—

13 “(A) the special educational needs of chil-
14 dren with disabilities were not being fully met;

15 “(B) more than one-half of the children
16 with disabilities in the United States did not re-
17 ceive appropriate educational services that
18 would enable such children to have full equality
19 of opportunity;

20 “(C) 1,000,000 of the children with dis-
21 abilities in the United States were excluded en-
22 tirely from the public school system and did not

1 go through the educational process with their
2 peers;

3 “(D) there were many children with dis-
4 abilities throughout the United States partici-
5 pating in regular school programs whose dis-
6 abilities prevented such children from having a
7 successful educational experience because their
8 disabilities were undetected; and

9 “(E) because of the lack of adequate serv-
10 ices within the public school system, families
11 were often forced to find services outside the
12 public school system, often at great distance
13 from their residence and at their own expense.

14 “(3) Since the enactment and implementation
15 of the Education for All Handicapped Children Act
16 of 1975, this Act has been successful in ensuring
17 children with disabilities and the families of such
18 children access to a free appropriate public edu-
19 cation and in improving educational results for chil-
20 dren with disabilities.

21 “(4) However, the implementation of this Act
22 has been impeded by low expectations, and an insuf-
23 ficient focus on applying replicable research on prov-
24 en methods of teaching and learning for children
25 with disabilities.

1 “(5) Over 20 years of research and experience
2 has demonstrated that the education of children with
3 disabilities can be made more effective by—

4 “(A) having high expectations for such
5 children and ensuring their access in the gen-
6 eral curriculum to the maximum extent pos-
7 sible;

8 “(B) ensuring that families of such chil-
9 dren have meaningful opportunities to partici-
10 pate in the education of their children at school
11 and at home;

12 “(C) coordinating this Act with other local,
13 educational service agency, State, and Federal
14 school improvement efforts in order to ensure
15 that such children benefit from such efforts and
16 that special education can become a service for
17 such children rather than a place where they
18 are sent;

19 “(D) providing appropriate special edu-
20 cation and related services and aids and sup-
21 ports in the regular classroom to such children,
22 whenever appropriate;

23 “(E) supporting high-quality, intensive
24 professional development for all personnel who
25 work with such children in order to ensure that

1 they have the skills and knowledge necessary to
2 enable them—

3 “(i) to meet developmental goals and,
4 to the maximum extent possible, those
5 challenging expectations that have been es-
6 tablished for all children; and

7 “(ii) to be prepared to lead produc-
8 tive, independent, adult lives, to the maxi-
9 mum extent possible;

10 “(F) providing incentives for whole-school
11 approaches and early intervention to reduce the
12 need to label children as disabled in order to
13 address their learning needs; and

14 “(G) focusing resources on teaching and
15 learning while reducing paperwork and require-
16 ments that do not assist in improving edu-
17 cational results.

18 “(6) While States, local educational agencies,
19 and educational service agencies are responsible for
20 providing an education for all children with disabil-
21 ities, it is in the national interest that the Federal
22 Government have a role in assisting State and local
23 efforts to educate children with disabilities in order
24 to improve results for such children and to ensure
25 equal protection of the law.

1 “(7)(A) The Federal Government must be re-
2 sponsive to the growing needs of an increasingly
3 more diverse society. A more equitable allocation of
4 resources is essential for the Federal Government to
5 meet its responsibility to provide an equal edu-
6 cational opportunity for all individuals.

7 “(B) America’s racial profile is rapidly chang-
8 ing. Between 1980 and 1990, the rate of increase in
9 the population for white Americans was 6 percent,
10 while the rate of increase for racial and ethnic mi-
11 norities was much higher: 53 percent for Hispanics,
12 13.2 percent for African-Americans, and 107.8 per-
13 cent for Asians.

14 “(C) By the year 2000, this Nation will have
15 275,000,000 people, nearly one of every three of
16 whom will be either African-American, Hispanic,
17 Asian-American, or American Indian.

18 “(D) Taken together as a group, minority chil-
19 dren are comprising an ever larger percentage of
20 public school students. Large city school populations
21 are overwhelmingly minority, for example, for fall
22 1993, the figure for Miami was 84 percent; Chicago,
23 89 percent; Philadelphia, 78 percent; Baltimore, 84
24 percent; Houston, 88 percent; and Los Angeles, 88
25 percent.

1 “(E) Recruitment efforts within special edu-
2 cation at the level of preservice, continuing edu-
3 cation, and practice must focus on bringing larger
4 numbers of minorities into the profession in order to
5 provide appropriate practitioner knowledge, role
6 models, and sufficient manpower to address the
7 clearly changing demography of special education.

8 “(F) The limited English proficient population
9 is the fastest growing in our Nation, and the growth
10 is occurring in many parts of our Nation. In the Na-
11 tion’s 2 largest school districts, limited English stu-
12 dents make up almost half of all students initially
13 entering school at the kindergarten level. Studies
14 have documented apparent discrepancies in the levels
15 of referral and placement of limited English pro-
16 ficient children in special education. The Depart-
17 ment of Education has found that services provided
18 to limited English proficient students often do not
19 respond primarily to the pupil’s academic needs.
20 These trends pose special challenges for special edu-
21 cation in the referral, assessment, and services for
22 our Nation’s students from non-English language
23 backgrounds.

24 “(8)(A) Greater efforts are needed to prevent
25 the intensification of problems connected with

1 mislabeling and high dropout rates among minority
2 children with disabilities.

3 “(B) More minority children continue to be
4 served in special education than would be expected
5 from the percentage of minority students in the gen-
6 eral school population.

7 “(C) Poor African-American children are 3.5
8 times more likely to be identified by their teacher as
9 mentally retarded than their white counterpart.

10 “(D) Although African-Americans represent 12
11 percent of elementary and secondary enrollments,
12 they constitute 28 percent of total enrollments in
13 special education.

14 “(E) The drop out rate is 68 percent higher for
15 minorities than for whites.

16 “(F) More than 50 percent of minority students
17 in large cities drop out of school.

18 “(9)(A) The opportunity for full participation
19 in awards for grants and contracts; boards of orga-
20 nizations receiving funds under this Act; and peer
21 review panels; and training of professionals in the

1 area of special education by minority individuals, or-
2 ganizations, and historically black colleges and uni-
3 versities is essential if we are to obtain greater suc-
4 cess in the education of minority children with dis-
5 abilities.

6 “(B) In 1989, of the 661,000 college and uni-
7 versity professors, 4.6 percent were African-Amer-
8 ican and 3.1 percent were Hispanic. Of the
9 3,600,000 teachers, prekindergarten through high
10 school, 9.4 percent were African-American and 3.9
11 percent were Hispanic.

12 “(C) Students from minority groups comprise
13 more than 50 percent of K–12 public school enroll-
14 ment in seven States yet minority enrollment in
15 teacher training programs is less than 15 percent in
16 all but six States.

17 “(D) As the number of African-American and
18 Hispanic students in special education increases, the
19 number of minority teachers and related service per-
20 sonnel produced in our colleges and universities con-
21 tinues to decrease.

22 “(E) Ten years ago, 12.5 percent of the United
23 States teaching force in public elementary and sec-
24 ondary schools were members of a minority group.
25 Minorities comprised 21.3 percent of the national

1 population at that time and were clearly underrep-
2 resented then among employed teachers. Today, the
3 elementary and secondary teaching force is 3 to 5
4 percent minority, while one-third of the students in
5 public schools are minority children.

6 “(F) As recently as 1991, historically black col-
7 leges and universities enrolled 44 percent of the Af-
8 rican-American teacher trainees in the Nation. How-
9 ever, in 1993, historically black colleges and univer-
10 sities received only 4 percent of the discretionary
11 funds for special education and related services per-
12 sonnel training under this Act.

13 “(G) While African-American students con-
14 stitute 28 percent of total enrollment in special edu-
15 cation, only 11.2 percent of individuals enrolled in
16 preservice training programs for special education
17 are African-American.

18 “(H) In 1986–87, of the degrees conferred in
19 education at the B.A., M.A., and Ph.D levels, only
20 6, 8, and 8 percent, respectively, were awarded to
21 African-American or Hispanic students.

22 “(10) Minorities and underserved persons are
23 socially disadvantaged because of the lack of oppor-
24 tunities in training and educational programs,
25 undergirded by the practices in the private sector

1 that impede their full participation in the main-
2 stream of society.

3 “(d) PURPOSES.—The purposes of this title are—

4 “(1) to ensure that all children with disabilities
5 have available to them a free appropriate public edu-
6 cation that emphasizes special education and related
7 services designed to meet their unique needs and
8 prepare them for employment and independent liv-
9 ing;

10 “(2) to ensure that the rights of children with
11 disabilities and parents of such children are pro-
12 tected;

13 “(3) to assist States, localities, education serv-
14 ice agencies, and Federal agencies to provide for the
15 education of all children with disabilities; and

16 “(4) to assess, and ensure the effectiveness of,
17 efforts to educate children with disabilities.

18 **“SEC. 602. DEFINITIONS.**

19 “As used in this title:

20 “(1) ASSISTIVE TECHNOLOGY DEVICE.—The
21 term ‘assistive technology device’ means any item,
22 piece of equipment, or product system, whether

1 acquired commercially off the shelf, modified, or cus-
2 tomized, that is used to increase, maintain, or im-
3 prove functional capabilities of a child with a
4 disability.

5 “(2) ASSISTIVE TECHNOLOGY SERVICE.—The
6 term ‘assistive technology service’ means any service
7 that directly assists a child with a disability in the
8 selection, acquisition, or use of an assistive tech-
9 nology device. Such term includes—

10 “(A) the evaluation of the needs of such
11 child, including a functional evaluation of the
12 child in the child’s customary environment;

13 “(B) purchasing, leasing, or otherwise pro-
14 viding for the acquisition of assistive technology
15 devices by such child;

16 “(C) selecting, designing, fitting, customiz-
17 ing, adapting, applying, maintaining, repairing,
18 or replacing of assistive technology devices;

19 “(D) coordinating and using other thera-
20 pies, interventions, or services with assistive
21 technology devices, such as those associated
22 with existing education and rehabilitation plans
23 and programs;

1 “(E) training or technical assistance for
2 such child, or, where appropriate, the family of
3 such child; and

4 “(F) training or technical assistance for
5 professionals (including individuals providing
6 education and rehabilitation services), employ-
7 ers, or other individuals who provide services to,
8 employ, or are otherwise substantially involved
9 in the major life functions of such child.

10 “(3) CHILD WITH A DISABILITY.—

11 “(A) IN GENERAL.—The term ‘child with a
12 disability’ means a child—

13 “(i) with mental retardation, hearing
14 impairments (including deafness), speech
15 or language impairments, visual impair-
16 ments (including blindness), serious emo-
17 tional disturbance, orthopedic impairments,
18 autism, traumatic brain injury, other
19 health impairments, or specific learning
20 disabilities; and

21 “(ii) who, by reason thereof, needs
22 special education and related services.

23 “(B) CHILD AGED 3 TO 9.—The term
24 ‘child with a disability’ for a child aged 3 to 9,
25 inclusive, may, at the discretion of the State

1 and the local educational agency, include a
2 child—

3 “(i) experiencing developmental
4 delays, as defined by the State and as
5 measured by appropriate diagnostic instru-
6 ments and procedures, in one or more of
7 the following areas: physical development,
8 cognitive development, communication de-
9 velopment, social or emotional develop-
10 ment, or adaptive development; and

11 “(ii) who, by reason thereof, needs
12 special education and related services.

13 “(4) EDUCATIONAL SERVICE AGENCY.—The
14 term ‘educational service agency’—

15 “(A) means a regional public multiservice
16 agency—

17 “(i) authorized by State law to de-
18 velop, manage, and provide services or pro-
19 grams to local educational agencies; and

20 “(ii) recognized as an administrative
21 agency for purposes of the provision of
22 special education and related services pro-
23 vided within public elementary and second-
24 ary schools of the State; and

1 “(B) includes any other public institution
2 or agency having administrative control and di-
3 rection over a public elementary or secondary
4 school.

5 “(5) ELEMENTARY SCHOOL.—The term ‘ele-
6 mentary school’ means a day or residential school
7 which provides elementary education, as determined
8 under State law, policy, or procedure.

9 “(6) EQUIPMENT.—The term ‘equipment’ in-
10 cludes—

11 “(A) machinery, utilities, and built-in
12 equipment and any necessary enclosures or
13 structures to house such machinery, utilities, or
14 equipment; and

15 “(B) all other items necessary for the
16 functioning of a particular facility as a facility
17 for the provision of educational services, includ-
18 ing items such as instructional equipment and
19 necessary furniture, printed, published, and
20 audio-visual instructional materials, tele-
21 communications, sensory, and other techno-
22 logical aids and devices, and books, periodicals,
23 documents, and other related materials.

24 “(7) EXCESS COSTS.—The term ‘excess costs’
25 means those costs which are in excess of the average

1 annual per student expenditure in a local edu-
 2 cational agency during the preceding school year for
 3 an elementary or secondary school student, as may
 4 be appropriate, and which shall be computed after
 5 deducting—

6 “(A) amounts received—

7 “(i) under part B of this title;

8 “(ii) under part A of title I of the El-
 9 ementary and Secondary Education Act of
 10 1965; or

11 “(iii) under part A of title VII of such
 12 Act; and

13 “(B) any State or local funds expended for
 14 programs that would qualify for assistance
 15 under any such part.

16 “(8) FREE APPROPRIATE PUBLIC EDU-
 17 CATION.—The term ‘free appropriate public edu-
 18 cation’ means special education and related services
 19 that—

20 “(A) have been provided at public expense,
 21 under public supervision and direction, and
 22 without charge;

23 “(B) meet the standards of the State edu-
 24 cational agency;

1 “(C) include an appropriate preschool, ele-
2 mentary, or secondary school education in the
3 State involved; and

4 “(D) are provided in conformity with the
5 individualized education program required
6 under section 614(d).

7 “(9) INDIAN.—The term ‘Indian’ means an in-
8 dividual who is a member of an Indian tribe.

9 “(10) INDIAN TRIBE.—The term ‘Indian tribe’
10 means any Federal or State Indian tribe, band,
11 rancheria, pueblo, colony, or community, including
12 any Alaskan native village or regional village cor-
13 poration (as defined in or established under the
14 Alaska Native Claims Settlement Act).

15 “(11) INDIVIDUALIZED EDUCATION PRO-
16 GRAM.—The term ‘individualized education program’
17 or ‘IEP’ means a written statement for each child
18 with a disability that is developed, reviewed, and re-
19 vised in accordance with section 614(d) and that in-
20 cludes—

21 “(A) a statement of the child’s present lev-
22 els of educational performance, including—

23 “(i) how the child’s disability affects
24 the child’s involvement and progress in the
25 general curriculum; or

1 “(ii) for preschool children, as appro-
2 priate, how the disability affects the child’s
3 participation in appropriate activities;

4 “(B) a statement of measurable annual
5 goals, including benchmarks or short-term ob-
6 jectives, related to—

7 “(i) meeting the child’s needs that re-
8 sult from the child’s disability to enable
9 the child to be involved in and progress in
10 the general curriculum; and

11 “(ii) meeting each of the child’s other
12 educational needs that result from the
13 child’s disability;

14 “(C) a statement of how the classroom was
15 adapted before the student was referred for
16 identification as a child with a disability;

17 “(D) a justification of the extent, if any, to
18 which the child will not be educated with non-
19 disabled children;

20 “(E) a statement of the special education
21 and related services and supplementary aids
22 and services to be provided to the child, or on
23 behalf of the child, and any program modifica-
24 tions or support for school personnel necessary
25 for the child—

1 “(i) to progress toward the attainment
2 of the annual goals described in subpara-
3 graph (B); and

4 “(ii) to be involved and progress in
5 the general curriculum in accordance with
6 subparagraph (A) and to participate in ex-
7 tracurricular and other nonacademic activi-
8 ties;

9 “(F)(i) a statement of any individual modi-
10 fications in the administration of State or dis-
11 trictwide assessments of student achievement
12 that are needed in order for the child to partici-
13 pate in such assessment; and

14 “(ii) if the individualized education pro-
15 gram team determines that the child will not
16 participate in a particular State or districtwide
17 assessment of student achievement (or part of
18 such an assessment), a statement of—

19 “(I) why that assessment is not ap-
20 propriate for the child; and

21 “(II) how the child will be assessed;

22 “(G) the projected date for the beginning
23 of the services and modifications described in

1 subparagraph (E), and the anticipated fre-
2 quency, location, and duration of those services
3 and modifications;

4 “(H)(i) beginning at age 14, and updated
5 annually, a statement of the transition service
6 needs of the child under the applicable compo-
7 nents of the child’s IEP that focuses on the
8 child’s courses of study (such as participation
9 in advanced-placement courses or a vocational
10 education or school-to-work program);

11 “(ii) beginning at age 16 (or younger, if
12 determined appropriate by the IEP Team), a
13 statement of needed transition services for the
14 child, including, when appropriate, a statement
15 of the interagency responsibilities or any needed
16 linkages; and

17 “(iii) beginning at least one year before the
18 child reaches the age of majority under State
19 law, a statement that the child has been in-
20 formed of his or her rights under this title, if
21 any, that will transfer to the child on reaching
22 the age of majority under section 615(m); and

23 “(I) a statement of—

1 “(i) how the child’s progress toward
2 the annual goals described in subpara-
3 graph (B) will be measured; and

4 “(ii) how the child’s parents will be
5 regularly informed (by such means as peri-
6 odic report cards), at least as often as par-
7 ents are informed of their nondisabled chil-
8 dren’s progress, of—

9 “(I) their child’s progress toward
10 the annual goals described in subpara-
11 graph (B); and

12 “(II) the extent to which that
13 progress is sufficient to enable the
14 child to achieve the objectives by the
15 end of the year.

16 “(12) INDIVIDUALIZED EDUCATION PROGRAM
17 TEAM.—The term ‘individualized education program
18 team’ or ‘IEP Team’ means a group of individuals
19 composed of—

20 “(A) the parents of a child with a
21 disability;

22 “(B) at least one regular education teacher
23 of such child (if the child is, or may be, partici-
24 pating in the regular education environment);

1 “(C) at least one special education teacher,
2 or where appropriate, at least one special edu-
3 cation provider of such child;

4 “(D) a representative of the local edu-
5 cational agency who—

6 “(i) is qualified to provide, or super-
7 vise the provision of, specially designed in-
8 struction to meet the unique needs of chil-
9 dren with disabilities;

10 “(ii) is knowledgeable about the gen-
11 eral curriculum; and

12 “(iii) is knowledgeable about the avail-
13 ability of resources of the local educational
14 agency;

15 “(E) whenever appropriate, the child with
16 a disability; and

17 “(F) at the discretion of the parent or the
18 agency, other individuals who have special ex-
19 pertise or knowledge regarding the abilities and
20 disability or disabilities of the child, including,
21 as appropriate, related services personnel who
22 are or who will be working with the child.

23 “(13) INSTITUTION OF HIGHER EDUCATION.—

24 The term ‘institution of higher education’—

1 “(A) has the meaning given that term in
2 section 1201(a) of the Higher Education Act of
3 1965; and

4 “(B) also includes any community college
5 receiving funding from the Secretary of the In-
6 terior under the Tribally Controlled Community
7 College Assistance Act of 1978.

8 “(14) LOCAL EDUCATIONAL AGENCY.—The
9 term ‘local educational agency’ means—

10 “(A) a public board of education or other
11 public authority legally constituted within a
12 State for either administrative control or direc-
13 tion of, or to perform a service function for,
14 public elementary or secondary schools in a
15 city, county, township, school district, or other
16 political subdivision of a State, or for a com-
17 bination of school districts or counties as are
18 recognized in a State as an administrative
19 agency for its public elementary or secondary
20 schools;

21 “(B) any other public institution or agency
22 having administrative control and direction of a
23 public elementary or secondary school; or

24 “(C) an educational service agency.

1 “(15) NATIVE LANGUAGE.—The term ‘native
2 language’, when used with reference to an individual
3 of limited English proficiency, means the language
4 normally used by the individual, or in the case of a
5 child, the language normally used by the parents of
6 the child, and includes American Sign Language.

7 “(16) NONPROFIT.—The term ‘nonprofit’ as
8 applied to a school, agency, organization, or institu-
9 tion means a school, agency, organization, or institu-
10 tion owned and operated by one or more nonprofit
11 corporations or associations no part of the net earn-
12 ings of which inures, or may lawfully inure, to the
13 benefit of any private shareholder or individual.

14 “(17) PARENT.—The term ‘parent’ includes a
15 legal guardian or surrogate parent.

16 “(18) PARENT ORGANIZATION.—The term ‘par-
17 ent organization’ means a private nonprofit organi-
18 zation (but not including an institution of higher
19 education) that—

20 “(A) has a board of directors—

21 “(i) the majority of whom are parents
22 of children with disabilities;

23 “(ii) that includes—

1 “(I) individuals working in the
2 fields of special education, related
3 services, and early intervention; and

4 “(II) individuals with disabilities;
5 and

6 “(iii) the parent and professional
7 members of which are broadly representa-
8 tive of the population to be served; or

9 “(B)(i) represents the interests of individ-
10 uals with disabilities and has established a spe-
11 cial governing committee which meets the re-
12 quirements of subparagraph (A); and

13 “(ii) has a memorandum of understanding
14 between the special governing committee and
15 the board of directors of the organization which
16 clearly outlines the relationship between the
17 board and the committee and the decisionmak-
18 ing responsibilities and authority of each.

19 “(19) PARENT TRAINING AND INFORMATION
20 CENTER.—The term ‘parent training and informa-
21 tion center’ means a center that—

22 “(A) provides training and information
23 that meets the training and information needs
24 of parents of children with disabilities living in
25 the area served by the center; and

1 “(B) assists parents—

2 “(i) to better understand the nature
3 of their children’s disabilities and their
4 educational and developmental needs;

5 “(ii) to communicate effectively with
6 personnel responsible for providing special
7 education, early intervention, and related
8 services;

9 “(iii) to participate in decisionmaking
10 processes and the development of the IEP;

11 “(iv) to obtain appropriate informa-
12 tion about the range of options, programs,
13 services, and resources available to assist
14 children with disabilities and their families;

15 “(v) to understand the programs
16 under this title for the education of, and
17 the provision of early intervention services
18 to, children with disabilities; and

19 “(vi) to participate in school reform
20 activities.

21 “(20) RELATED SERVICES.—The term ‘related
22 services’ means transportation, and such devel-
23 opmental, corrective, and other supportive services
24 (including speech-language pathology and audiology

1 services, psychological services, physical and occupa-
2 tional therapy, recreation, including therapeutic
3 recreation, social work services, counseling services,
4 including rehabilitation counseling, orientation and
5 mobility services, and medical services, except that
6 such medical services shall be for diagnostic and
7 evaluation purposes only) as may be required to as-
8 sist a child with a disability to benefit from special
9 education, and includes the early identification and
10 assessment of disabling conditions in children.

11 “(21) SECONDARY SCHOOL.—The term ‘second-
12 ary school’ means a day or residential school which
13 provides secondary education, as determined under
14 State law, policy, or procedure, except that it does
15 not include any education provided beyond grade 12.

16 “(22) SECRETARY.—The term ‘Secretary’
17 means the Secretary of Education.

18 “(23) SPECIAL EDUCATION.—The term ‘special
19 education’ means specially designed instruction, at
20 no cost to parents, to meet the unique needs of a
21 child with a disability, including—

22 “(A) instruction conducted in the class-
23 room, in the home, in hospitals and institutions,
24 and in other settings; and

25 “(B) instruction in physical education.

1 “(24) SPECIFIC LEARNING DISABILITY.—

2 “(A) IN GENERAL.—The term ‘specific
3 learning disability’ means a disorder in one or
4 more of the basic psychological processes in-
5 volved in understanding or in using language,
6 spoken or written, which disorder may manifest
7 itself in imperfect ability to listen, think, speak,
8 read, write, spell, or do mathematical calcula-
9 tions.

10 “(B) DISORDERS INCLUDED.—Such term
11 includes such conditions as perceptual disabil-
12 ities, brain injury, minimal brain dysfunction,
13 dyslexia, and developmental aphasia.

14 “(C) DISORDERS NOT INCLUDED.—Such
15 term does not include a learning problem that
16 is primarily the result of visual, hearing, or
17 motor disabilities, of mental retardation, of
18 emotional disturbance, or of environmental, cul-
19 tural, or economic disadvantage.

20 “(25) STATE.—The term ‘State’ means each of
21 the 50 States, the District of Columbia, the Com-
22 monwealth of Puerto Rico, and each of the terri-
23 tories.

24 “(26) STATE EDUCATIONAL AGENCY.—The
25 term ‘State educational agency’ means the State

1 board of education or other agency or officer pri-
 2 marily responsible for the State supervision of public
 3 elementary and secondary schools, or, if there is no
 4 such officer or agency, an officer or agency des-
 5 ignated by the Governor or by State law.

6 “(27) SUPPLEMENTARY AIDS AND SERVICES.—
 7 The term ‘supplementary aids and services’ means,
 8 aids, services, and other supports that are provided
 9 in regular education classes or other education-relat-
 10 ed settings to enable children with disabilities to be
 11 educated with nondisabled children to the maximum
 12 extent appropriate in accordance with section
 13 612(a)(4).

14 “(28) TERRITORY.—The term ‘territory’ means
 15 American Samoa, the Commonwealth of the North-
 16 ern Mariana Islands, Guam, and the Virgin Islands.

17 “(29) TRANSITION SERVICES.—The term ‘tran-
 18 sition services’ means a coordinated set of activities
 19 for a child with a disability that—

20 “(A) are designed within an outcome-ori-
 21 ented process, which promotes movement from
 22 school to post-school activities, including post-
 23 secondary education, vocational training, inte-
 24 grated employment (including supported em-
 25 ployment), continuing and adult education,

1 adult services, independent living, or community
2 participation;

3 “(B) are based upon the individual child’s
4 needs, taking into account the child’s pref-
5 erences and interests; and

6 “(C) include instruction, related services,
7 community experiences, the development of em-
8 ployment and other post-school adult living ob-
9 jectives, and, when appropriate, acquisition of
10 daily living skills and functional vocational eval-
11 uation.

12 **“SEC. 603. OFFICE OF SPECIAL EDUCATION PROGRAMS.**

13 “(a) ESTABLISHMENT.—There shall be, within the
14 Office of Special Education and Rehabilitative Services in
15 the Department of Education, an Office of Special Edu-
16 cation Programs which shall be the principal agency in
17 such Department for administering and carrying out this
18 title and other programs and activities concerning the edu-
19 cation and training of children with disabilities.

20 “(b) DIRECTOR.—The Office established under sub-
21 section (a) shall be headed by a Director who shall be se-
22 lected by the Secretary and shall report directly to the As-
23 sistant Secretary for Special Education and Rehabilitative
24 Services.

7 “(a) IN GENERAL.—A State shall not be immune
8 under the eleventh amendment to the Constitution of the
9 United States from suit in Federal court for a violation
10 of this title.

17 “(c) EFFECTIVE DATE.—The provisions of sub-
18 sections (a) and (b) apply with respect to violations that
19 occur in whole or part after the date of the enactment
20 of the Education of the Handicapped Act Amendments of
21 1990.

24 “(a) PUBLIC COMMENT PERIOD.—The Secretary
25 shall provide a public comment period of at least 90 days

1 on any regulation proposed under part B or part C of this
2 title on which an opportunity for public comment is other-
3 wise required by law.

4 “(b) PROTECTIONS PROVIDED TO CHILDREN.—The
5 Secretary may not implement, or publish in final form,
6 any regulation prescribed pursuant to this title which
7 would procedurally or substantively lessen the protections
8 provided to children with disabilities under this title, as
9 embodied in regulations in effect on July 20, 1983 (par-
10 ticularly as such protections relate to parental consent to
11 initial evaluation or initial placement in special education,
12 least restrictive environment, related services, timeliness,
13 attendance of evaluation personnel at individualized edu-
14 cation program meetings, or qualifications of personnel),
15 except to the extent that such regulation reflects the clear
16 and unequivocal intent of the Congress in legislation.

17 “(c) CORRESPONDENCE FROM DEPARTMENT OF
18 EDUCATION DESCRIBING INTERPRETATIONS OF THIS
19 PART.—

20 “(1) IN GENERAL.—The Secretary shall, on a
21 quarterly basis, publish in the Federal Register, and
22 widely disseminate to interested entities through var-
23 ious additional forms of communication, a list of
24 correspondence from the Department of Education
25 received by individuals during the previous quarter

1 that describes the interpretations of the Department
2 of Education of this Act or the regulations imple-
3 mented pursuant to this Act.

4 “(2) ADDITIONAL INFORMATION.—For each
5 item of correspondence published in a list under
6 paragraph (1), the Secretary shall identify the topic
7 addressed by the correspondence and shall include
8 such other summary information as the Secretary
9 determines to be appropriate.

10 “(3) RESTRICTIONS ON USE OF CORRESPOND-
11 ENCE.—

12 “(A) IN GENERAL.—Except as provided in
13 subparagraph (B), an item of correspondence
14 published and disseminated under paragraph
15 (1) may not be used in the following:

16 “(i) An administrative or due process
17 action commenced under section 615.

18 “(ii) A compliance review or other ac-
19 tion relating to a State educational agency
20 conducted by the Department of Edu-
21 cation.

22 “(iii) A compliance review or other ac-
23 tion relating to a local educational agency
24 or other agency conducted by a State edu-
25 cational agency.

1 “(B) EXCEPTIONS.—A restriction on the
 2 use of an item of correspondence under sub-
 3 paragraph (A) shall not apply if the item of
 4 correspondence—

5 “(i) is directly related to the particu-
 6 lar fact situation, practice, or policy at
 7 issue under clause (i) or (iii) of subpara-
 8 graph (A);

9 “(ii)(I) was originally directed to one
 10 of the parties to the action under subpara-
 11 graph (A)(i); or

12 “(II) was originally directed to the
 13 particular local educational agency or other
 14 agency under subparagraph (A)(iii); or

15 “(iii) was originally directed to the
 16 particular State educational agency under
 17 subparagraph (A)(ii).

18 **“SEC. 606. EMPLOYMENT OF INDIVIDUALS WITH DISABIL-**
 19 **ITIES.**

20 “The Secretary shall assure that each recipient of as-
 21 sistance under this Act shall make positive efforts to em-
 22 ploy and advance in employment qualified individuals with
 23 disabilities in programs assisted under this Act.

1 **“PART B—ASSISTANCE FOR EDUCATION OF ALL**
 2 **CHILDREN WITH DISABILITIES**

3 **“SEC. 611. AUTHORIZATION; ALLOTMENT; USE OF FUNDS;**
 4 **AUTHORIZATION OF APPROPRIATIONS.**

5 “(a) AUTHORIZATION.—The Secretary of Education
 6 shall provide grants to States and provide amounts to the
 7 Secretary of the Interior for the purpose of providing spe-
 8 cial education and related services to children with disabil-
 9 ities in accordance with this part.

10 “(b) ALLOTMENT AMONG STATES.—

11 “(1) RESERVATION FOR THE TERRITORIES.—

12 “(A) IN GENERAL.—Of the amount appro-
 13 priated pursuant to subsection (e) to carry out
 14 this part for a fiscal year, the Secretary shall
 15 allot not more than one percent among the ter-
 16 ritories in accordance with this paragraph.

17 “(B) BASIS FOR ALLOTMENT.—The Sec-
 18 retary shall allot to each territory an amount
 19 that bears the same proportion to the amount
 20 appropriated pursuant to subsection (e) for a
 21 fiscal year as the number of individuals aged 3
 22 to 21, inclusive, residing in such territory bears
 23 to the aggregate number of such individuals re-
 24 siding in all such territories.

25 “(C) PROHIBITION ON CONSOLIDATION OF
 26 GRANTS.—Section 501 of Public Law 95–134

(48 U.S.C. 1469a; relating to the consolidation of one or more grants provided to certain territories) shall not apply with respect to amounts provided to a territory under a grant under this part.

“(2) SECRETARY OF THE INTERIOR.—Of the amount appropriated pursuant to subsection (e) to carry out this part for a fiscal year, the Secretary shall provide to the Secretary of the Interior an amount equal to 1.226 percent to carry out subsection (d) (relating to special education and related services for Indian children with disabilities).

“(3) STATES.—

“(A) IN GENERAL.—After determining the amount to be allotted to the territories under paragraph (1) and the amount to be provided to the Secretary of the Interior under paragraph (2) for a fiscal year, the Secretary shall allot the remaining amount to the remaining States in accordance with this paragraph.

“(B) BASIS FOR ALLOTMENT.—Except as provided in subparagraph (D), the Secretary shall allot to each State an amount equal to the sum of the following amounts:

“(i) The amount equal to—

1 “(I) 85 percent of the remaining
2 amount described in subparagraph
3 (A); multiplied by

4 “(II) the child population per-
5 centage of the State (as determined
6 under subparagraph (C)(i)).

7 “(ii) The amount equal to—

8 “(I) 15 percent of the remaining
9 amount described in subparagraph
10 (A); multiplied by

11 “(II) the child poverty percentage
12 of the State (as determined under
13 subparagraph (C)(ii)).

14 “(C) DETERMINATION OF CHILD POPU-
15 LATION PERCENTAGE AND CHILD POVERTY
16 PERCENTAGE.—

17 “(i) CHILD POPULATION PERCENT-
18 AGE.—The child population percentage
19 shall be determined by comparing—

20 “(I) the number of children aged
21 3 to 21, inclusive, in the State who
22 are of the same age as children with
23 disabilities for whom the State en-
24 sures the availability of a free appro-
25 priate public education; to

1 “(II) the number of such children
2 in the remaining States.

3 “(ii) CHILD POVERTY PERCENTAGE.—
4 The child poverty percentage shall be de-
5 termined by comparing—

6 “(I) the number of children aged
7 3 to 21, inclusive, in the State living
8 in poverty who are of the same age as
9 children with disabilities for whom the
10 State ensures the availability of a free
11 appropriate public education; to

12 “(II) the number of such children
13 in the remaining States.

14 “(D) TRANSITION FORMULA.—For each of
15 the fiscal years 1998 through 2006, the Sec-
16 retary shall allot the remaining amount to the
17 remaining States in accordance with the follow-
18 ing:

19 “(i) FISCAL YEAR 1998.—For fiscal
20 year 1998, the Secretary shall allot to each
21 remaining State the sum of—

22 “(I) 10 percent multiplied by the
23 amount determined for such State
24 under subparagraph (B); and

1 “(II) 90 percent multiplied by
2 the amount determined for such State
3 under subparagraph (E).

4 “(ii) FISCAL YEAR 1999.—For fiscal
5 year 1999, the Secretary shall allot to each
6 remaining State the sum of—

7 “(I) 20 percent multiplied by the
8 amount determined for such State
9 under subparagraph (B); and

10 “(II) 80 percent multiplied by
11 the amount determined for such State
12 under subparagraph (E).

13 “(iii) FISCAL YEAR 2000.—For fiscal
14 year 2000, the Secretary shall allot to each
15 remaining State the sum of—

16 “(I) 30 percent multiplied by the
17 amount determined for such State
18 under subparagraph (B); and

19 “(II) 70 percent multiplied by
20 the amount determined for such State
21 under subparagraph (E).

22 “(iv) FISCAL YEAR 2001.—For fiscal
23 year 2001, the Secretary shall allot to each
24 remaining State the sum of—

1 “(I) 40 percent multiplied by the
2 amount determined for such State
3 under subparagraph (B); and

4 “(II) 60 percent multiplied by
5 the amount determined for such State
6 under subparagraph (E).

7 “(v) FISCAL YEAR 2002.—For fiscal
8 year 2002, the Secretary shall allot to each
9 remaining State the sum of—

10 “(I) 50 percent multiplied by the
11 amount determined for such State
12 under subparagraph (B); and

13 “(II) 50 percent multiplied by
14 the amount determined for such State
15 under subparagraph (E).

16 “(vi) FISCAL YEAR 2003.—For fiscal
17 year 2003, the Secretary shall allot to each
18 remaining State the sum of—

19 “(I) 60 percent multiplied by the
20 amount determined for such State
21 under subparagraph (B); and

22 “(II) 40 percent multiplied by
23 the amount determined for such State
24 under subparagraph (E).

1 “(vii) FISCAL YEAR 2004.—For fiscal
2 year 2004, the Secretary shall allot to each
3 remaining State the sum of—

4 “(I) 70 percent multiplied by the
5 amount determined for such State
6 under subparagraph (B); and

7 “(II) 30 percent multiplied by
8 the amount determined for such State
9 under subparagraph (E).

10 “(viii) FISCAL YEAR 2005.—For fiscal
11 year 2005, the Secretary shall allot to each
12 remaining State the sum of—

13 “(I) 80 percent multiplied by the
14 amount determined for such State
15 under subparagraph (B); and

16 “(II) 20 percent multiplied by
17 the amount determined for such State
18 under subparagraph (E).

19 “(ix) FISCAL YEAR 2006.—For fiscal
20 year 2006, the Secretary shall allot to each
21 remaining State the sum of—

22 “(I) 90 percent multiplied by the
23 amount determined for such State
24 under subparagraph (B); and

1 “(II) 10 percent multiplied by
2 the amount determined for such State
3 under subparagraph (E).

4 “(E) BASE AMOUNT FOR 1997.—

5 “(i) IN GENERAL.—Subject to clause
6 (ii), the amount determined under this
7 subparagraph for a State is the amount
8 that bears the same proportion to the re-
9 maining amount (described in subpara-
10 graph (A)) for the fiscal year under sub-
11 paragraph (D) as the amount received by
12 the State under this section for fiscal year
13 1997 bears to the aggregate of the
14 amounts received by the remaining States
15 (described in subparagraph (A)) under this
16 section for fiscal year 1997.

17 “(ii) REDUCTION IN AMOUNT.—If the
18 State received an amount under this sec-
19 tion for fiscal year 1997 on the basis of
20 children aged 3 to 5, inclusive, in such
21 State, but the State does not make a free
22 appropriate public education available to
23 all children with disabilities aged 3 to 5,
24 inclusive, in the State at the time a deter-
25 mination is made under subparagraph (C),

1 the Secretary shall reduce, on a propor-
2 tional basis, the amount under clause (i)
3 for purposes of allotting amounts under
4 such subparagraph.

5 “(F) INCREASE IN ALLOTMENT AMOUNT
6 DURING TRANSITION YEARS.—

7 “(i) IN GENERAL.— For each of the
8 fiscal years 1998 through 2006, if the
9 amount determined for a State under sub-
10 paragraph (D) is an amount that is less
11 than the amount received by the State
12 under this section for fiscal year 1997
13 and—

14 “(I) the amount of the difference
15 between such two amounts is less
16 than an amount equal to 10 percent
17 of the amount received by the State
18 for fiscal year 1997, then the amount
19 allotted to the State for the fiscal year
20 shall be equal to the amount received
21 by the State for fiscal year 1997; or

22 “(II) the amount of the dif-
23 ference between such two amounts is
24 equal to or greater than an amount

1 equal to 10 percent of the amount re-
2 ceived by the State for fiscal year
3 1997, then the amount allotted to the
4 State for the fiscal year shall be equal
5 to the sum of (aa) the amount deter-
6 mined for the State under subpara-
7 graph (D), and (bb) the amount equal
8 to 10 percent of the amount received
9 by the State for fiscal year 1997.

10 “(ii) ADJUSTMENT.—If amounts are
11 allotted to one or more States under clause
12 (i) for a fiscal year, the Secretary shall re-
13 duce, on a proportional basis, the amounts
14 allotted to the remaining States for which
15 the amount determined under subpara-
16 graph (D) is an amount that is greater
17 than the amount received by such States
18 under this section for fiscal year 1997.

19 “(G) MINIMUM ALLOTMENT.—For each
20 fiscal year for which one of the conditions of
21 subparagraph (F) is met (or such subparagraph
22 does not apply) and subject to the availability
23 of appropriations, for fiscal year 1998 and each
24 subsequent fiscal year, the amount allotted to

1 each remaining State (described in subpara-
2 graph (A)) shall not be less than an amount
3 equal to one-third of one percent of the remain-
4 ing amount (described in subparagraph (A)) for
5 the fiscal year.

6 “(H) MAXIMUM ALLOTMENT.—

7 “(i) IN GENERAL.—For fiscal year
8 1998 and each subsequent fiscal year, the
9 amount allotted to each remaining State
10 (described in subparagraph (A)) under this
11 paragraph shall not be more than an
12 amount equal to—

13 “(I) the sum of—

14 “(aa) the number of children
15 with disabilities in the State,
16 aged 6 through 21, who are re-
17 ceiving special education and re-
18 lated services, as determined
19 under clause (ii); and

20 “(bb) if the State is eligible
21 for a grant under section 619,
22 the number of such children in
23 the State, aged 3 through 5; mul-
24 tiplied by

1 “(II) 40 percent of the average
2 per-pupil expenditure in public ele-
3 mentary and secondary schools in the
4 United States.

5 “(ii) DETERMINATION OF NUMBER OF
6 CHILDREN.—The number of children with
7 disabilities receiving special education and
8 related services in any fiscal year shall be
9 equal to the number of such children re-
10 ceiving special education and related serv-
11 ices on December 1 of the fiscal year pre-
12 ceding the fiscal year for which the deter-
13 mination is made.

14 “(iii) AVERAGE PER PUPIL EXPENDI-
15 TURE.—For purposes of clause (i)(II), the
16 term ‘average per pupil expenditure’, in
17 the United States, means the aggregate
18 current expenditures, during the second
19 fiscal year preceding the fiscal year for
20 which the computation is made (or, if sat-
21 isfactory data for such year are not avail-
22 able at the time of computation, then dur-
23 ing the most recent preceding fiscal year
24 for which satisfactory data are available)
25 of all local educational agencies in the

1 United States (which, for purposes of this
2 subparagraph, means the fifty States and
3 the District of Columbia), as the case may
4 be, plus any direct expenditures by the
5 State for operation of such agencies (with-
6 out regard to the source of funds from
7 which either of such expenditures are
8 made), divided by the aggregate number of
9 children in average daily attendance to
10 whom such agencies provided free public
11 education during such preceding year.

12 “(4) SPECIAL RULE WITH RESPECT TO PUERTO
13 RICO.—

14 “(A) IN GENERAL.—Except as provided
15 subparagraph (B) and notwithstanding para-
16 graph (3), the amount allotted to Puerto Rico
17 for a fiscal year shall bear the same or lower
18 proportion to the remaining amount (described
19 in paragraph (3)(A)) as the amount received by
20 Puerto Rico under this section for fiscal year
21 1997 bears to the aggregate of the amounts re-
22 ceived by the remaining States (as described in
23 paragraph (3)(A)) under this section for fiscal
24 year 1997.

1 “(B) INCREASE IN ALLOTMENT AMOUNT
2 DURING CERTAIN FISCAL YEARS.—For each fis-
3 cal year for which the minimum allotment re-
4 quirement under paragraph (3)(G) is met, the
5 amount allotted to Puerto Rico for that fiscal
6 year shall be equal to—

7 “(i) subject to clause (ii), the sum
8 of—

9 “(I) the amount determined for
10 Puerto Rico under subparagraph (A);
11 and

12 “(II) the amount equal to 10 per-
13 cent of such amount determined for
14 Puerto Rico under subparagraph (A);
15 or

16 “(ii) if the amount determined for
17 Puerto Rico under clause (i) is greater
18 than the amount determined for Puerto
19 Rico under paragraph (3), the amount de-
20 termined for Puerto Rico under paragraph
21 (3).

22 “(C) ADJUSTMENT IN AMOUNTS TO RE-
23 MAINING STATES.—If the amount allotted to
24 Puerto Rico for a fiscal year is determined

under subparagraph (A) or (B)(i), the Secretary shall reallocate to the remaining States (as described in paragraph (3)(A)), on a proportional basis, any amount not otherwise allotted to Puerto Rico.

“(5) USE OF MOST RECENT POPULATION DATA.—For the purpose of providing grants under this part, the Secretary shall use the most recent population data and data on children aged 3 to 21, inclusive, living in poverty that are available and satisfactory to the Secretary.

“(c) USE OF FUNDS BY STATE.—

“(1) RESERVATION FOR STATE ACTIVITIES.—

“(A) IN GENERAL.—Subject to subparagraph (D), a State may reserve not more than 25 percent of the amount allotted to the State under paragraph (1) or (3) of subsection (b) for a fiscal year for administration and other State-level activities in accordance with subparagraphs (B) and (C).

“(B) STATE ADMINISTRATION.—

“(i) IN GENERAL.—For the purpose of administering programs under this part, including the coordination of activities

1 under this part with, and providing tech-
2 nical assistance to, other programs that
3 provide services to children with disabil-
4 ities—

5 “(I) each territory may use up to
6 3 percent of the amount allotted to
7 the territory for a fiscal year, or
8 \$35,000, whichever is greater; and

9 “(II) each remaining State may
10 use up to 3 percent of the amount al-
11 lotted to the State for a fiscal year, or
12 \$450,000, whichever is greater.

13 “(ii) USE OF AMOUNTS FOR ADMINIS-
14 TRATION OF PART C.—If the State edu-
15 cational agency is the lead agency for the
16 State under part C, amounts described in
17 clause (i) may also be used for the admin-
18 istration of part C.

19 “(C) OTHER STATE-LEVEL ACTIVITIES.—A
20 State shall use any amounts reserved under
21 subparagraph (A) for a fiscal year that are not
22 used for administration under subparagraph
23 (B) for such fiscal year—

1 “(i) for support and direct services,
2 including technical assistance and person-
3 nel development and training;

4 “(ii) for administrative costs of mon-
5 itoring and complaint investigation, but
6 only to the extent that such costs exceed
7 the costs incurred for those activities dur-
8 ing fiscal year 1985;

9 “(iii) to establish and implement the
10 mediation process required by section
11 615(d), including providing for the costs of
12 mediators and support personnel;

13 “(iv) to assist local educational agen-
14 cies in meeting personnel shortages;

15 “(v) to develop a State improvement
16 plan under part D;

17 “(vi) for activities at the State and
18 local levels to meet the performance goals
19 established by the State under section
20 612(a)(14) and to support implementation
21 of the State improvement plan under part
22 D if the State receives funds under that
23 part; or

24 “(vii) to supplement other amounts
25 used to develop and implement a Statewide

1 coordinated services system designed to im-
2 prove results for children and families, in-
3 cluding children with disabilities and their
4 families, but not to exceed one percent of
5 the amount received by the State under
6 this section (such system shall be coordi-
7 nated with and, to the extent appropriate,
8 build on the system of coordinated services
9 developed by the State under part C).

10 “(D) REPORT ON USE OF AMOUNTS.—The
11 State shall, as part of the information required
12 to be submitted under section 612, submit a de-
13 scription of—

14 “(i) how amounts reserved under sub-
15 paragraph (A) will be used to meet the re-
16 quirements of this part;

17 “(ii) how such amounts will be allo-
18 cated among the activities described in
19 subparagraphs (B) and (C) to meet State
20 priorities based on input from local edu-
21 cational agencies; and

22 “(iii) what percentage of such
23 amounts, if any, will be distributed to local
24 educational agencies by formula.

1 “(2) SUBGRANTS TO LOCAL EDUCATIONAL
2 AGENCIES AND CERTAIN STATE AGENCIES.—

3 “(A) IN GENERAL.—The State shall pro-
4 vide at least 75 percent of the amount received
5 under a grant for a fiscal year to local edu-
6 cational agencies in the State that have estab-
7 lished their eligibility under section 613, and to
8 State agencies that received funds under section
9 614A(a) (as such section was in effect on the
10 day before the date of the enactment of the
11 IDEA Improvement Act of 1997) for fiscal year
12 1997 and have established their eligibility under
13 section 613, for use in accordance with this
14 part.

15 “(B) METHODS OF DISTRIBUTION.—A
16 State may provide amounts under subpara-
17 graph (A) to local educational agencies and
18 State agencies described under such subpara-
19 graph on the basis of—

20 “(i) school-age population;

21 “(ii) school enrollment;

22 “(iii) numbers of children with disabil-
23 ities receiving a free appropriate public
24 education;

1 “(iv) allocations for previous fiscal
2 years;

3 “(v) any two or more of the factors
4 described in clauses (i) through (iv); or

5 “(vi) poverty, in combination with one
6 or more of the factors described in clauses
7 (i) through (iv).

8 “(C) FORMER CHAPTER 1 STATE AGEN-
9 CIES.—

10 “(i) IN GENERAL.—To the extent nec-
11 essary for each of the fiscal years 1998
12 and 1999, the State shall use amounts
13 that are available under paragraph (1)(A)
14 to ensure that each State agency that re-
15 ceived amounts in fiscal year 1994 under
16 subpart 2 of part D of chapter 1 of title
17 I of the Elementary and Secondary Edu-
18 cation Act of 1965 (as such subpart was in
19 effect on the day before the date of the en-
20 actment of the Improving America’s
21 Schools Act of 1994) receives, from the
22 combination of funds under paragraph
23 (1)(A) and funds provided under subpara-
24 graph (A), an amount equal to—

1 “(I) the number of children with
2 disabilities, aged 6 to 21, inclusive, to
3 whom the agency was providing spe-
4 cial education and related services on
5 December 1 of the fiscal year for
6 which the funds were appropriated,
7 subject to the methods of distribution
8 under subparagraph (B); multiplied
9 by

10 “(II) the per-child amount pro-
11 vided under such subpart for fiscal
12 year 1994.

13 “(ii) ADDITIONAL USE OF
14 AMOUNTS.—The State may use amounts
15 described in clause (i) to ensure that each
16 local educational agency that received fis-
17 cal year 1994 funds under that subpart for
18 children who had transferred from a State-
19 operated or State-supported school or pro-
20 gram assisted under that subpart receives,
21 from the combination of funds available
22 under paragraph (1)(A) and funds pro-
23 vided under subparagraph (A), an amount
24 for each such child, aged 3 to 21, inclusive,
25 to whom the agency was providing special

1 education and related services on Decem-
2 ber 1 of the fiscal year for which the funds
3 were appropriated, equal to the per-child
4 amount the agency received under that
5 subpart for fiscal year 1994.

6 “(iii) DETERMINATION OF NUMBER
7 OF CHILDREN.—The number of children
8 counted under clause (i)(I) shall not exceed
9 the number of children aged 3 to 21, inclu-
10 sive, for whom the agency received
11 amounts in fiscal year 1994 under subpart
12 2 of part D of chapter 1 of title I of the
13 Elementary and Secondary Education Act
14 of 1965 (as such subpart was in effect on
15 the day before the date of the enactment
16 of the Improving America’s Schools Act of
17 1994).

18 “(D) REALLOCATION OF AMOUNTS.—If a
19 State educational agency determines that a
20 local educational agency is adequately providing
21 a free appropriate public education to all chil-
22 dren with disabilities residing in the area served
23 by that agency with State and local funds, the
24 State educational agency may reallocate any
25 portion of amounts received under a grant

1 under this part that are not needed by that
2 local agency to other local educational agencies
3 in the State that are not adequately providing
4 special education and related services to all chil-
5 dren with disabilities residing in the areas they
6 serve.

7 “(d) USE OF AMOUNTS BY SECRETARY OF THE IN-
8 TERIOR.—

9 “(1) PROVISION OF AMOUNTS FOR ASSIST-
10 ANCE.—

11 “(A) IN GENERAL.—The Secretary of Edu-
12 cation shall provide amounts to the Secretary of
13 the Interior to meet the need for assistance for
14 the education of children with disabilities on
15 reservations aged 5 to 21, inclusive, enrolled in
16 elementary and secondary schools for Indian
17 children operated or funded by the Secretary of
18 the Interior. The amount of such payment for
19 any fiscal year shall be equal to 80 percent of
20 the amount allotted under subsection (b)(2) for
21 that fiscal year.

22 “(B) CALCULATION OF NUMBER OF CHIL-
23 DREN.—In the case of Indian students ages 3

1 to 5, inclusive, who are enrolled in programs af-
2 filiated with Bureau of Indian Affairs (here-
3 after in this subsection referred to as ‘BIA’)
4 schools and that are required by the States in
5 which such schools are located to attain or
6 maintain State accreditation, and which schools
7 have such accreditation prior to the date of en-
8 actment of the Individuals with Disabilities
9 Education Act Amendments of 1991, the school
10 shall be allowed to count those children for the
11 purpose of distribution of the funds provided
12 under this paragraph to the Secretary of the
13 Interior. The Secretary of the Interior shall be
14 responsible for meeting all of the requirements
15 of this part for these children, in accordance
16 with paragraph (2).

17 “(C) ADDITIONAL REQUIREMENT.—With
18 respect to all other children aged 3 to 21, inclu-
19 sive, on reservations, the State educational
20 agency shall be responsible for ensuring that all
21 of the requirements of this part are imple-
22 mented.

23 “(2) SUBMISSION OF INFORMATION.—The Sec-
24 retary of Education may provide the Secretary of

1 the Interior amounts under paragraph (1) for a fis-
2 cal year only if the Secretary of the Interior submits
3 to the Secretary of Education information that—

4 “(A) demonstrates that the Department of
5 the Interior meets the appropriate require-
6 ments, as determined by the Secretary of Edu-
7 cation, of sections 612 (including monitoring
8 and evaluation activities) and 613;

9 “(B) includes a description of how the Sec-
10 retary of the Interior will coordinate the provi-
11 sion of services under this part with local edu-
12 cational agencies, tribes and tribal organiza-
13 tions, and other private and Federal service
14 providers;

15 “(C) includes an assurance that there are
16 public hearings, adequate notice of such hear-
17 ings, and an opportunity for comment afforded
18 to members of tribes, tribal governing bodies,
19 and affected local school boards before the
20 adoption of the policies, programs, and proce-
21 dures described in subparagraph (A);

22 “(D) includes an assurance that the Sec-
23 retary of the Interior will provide such informa-
24 tion as the Secretary of Education may require
25 to comply with section 618;

1 “(E) includes an assurance that the Sec-
2 retary of the Interior and the Secretary of
3 Health and Human Services have entered into
4 a memorandum of agreement, to be provided to
5 the Secretary of Education, for the coordination
6 of services, resources, and personnel between
7 their respective Federal, State, and local offices
8 and with State and local educational agencies
9 and other entities to facilitate the provision of
10 services to Indian children with disabilities re-
11 siding on or near reservations (such agreement
12 shall provide for the apportionment of respon-
13 sibilities and costs including, but not limited to,
14 child find, evaluation, diagnosis, remediation or
15 therapeutic measures, and (where appropriate)
16 equipment and medical or personal supplies as
17 needed for a child to remain in school or a pro-
18 gram); and

19 “(F) includes an assurance that the De-
20 partment of the Interior will cooperate with the
21 Department of Education in its exercise of
22 monitoring and oversight of this application,
23 and any agreements entered into between the
24 Secretary of the Interior and other entities

1 under this part, and will fulfill its duties under
2 this part.

3 Section 616(a) shall apply to the information de-
4 scribed in this paragraph.

5 “(3) PAYMENTS FOR EDUCATION AND SERVICES
6 FOR INDIAN CHILDREN WITH DISABILITIES AGED 3
7 TO 5.—

8 “(A) IN GENERAL.—With funds appro-
9 priated under subsection (e), the Secretary of
10 Education shall make payments to the Sec-
11 retary of the Interior to be distributed to tribes
12 or tribal organizations (as defined under section
13 4 of the Indian Self-Determination and Edu-
14 cation Assistance Act) or consortia of the above
15 to provide for the coordination of assistance for
16 special education and related services for chil-
17 dren with disabilities aged 3 to 5, inclusive, on
18 reservations served by elementary and second-
19 ary schools for Indian children operated or
20 funded by the Department of the Interior. The
21 amount of such payments under subparagraph
22 (B) for any fiscal year shall be equal to 20 per-
23 cent of the amount allotted under subsection
24 (b)(2).

1 “(B) DISTRIBUTION OF FUNDS.—The Sec-
2 retary of the Interior shall distribute the total
3 amount of the payment under subparagraph
4 (A) by allocating to each tribe or tribal organi-
5 zation an amount based on the number of chil-
6 dren with disabilities, ages 3 to 5, inclusive, re-
7 siding on reservations as reported annually di-
8 vided by the total of such children served by all
9 tribes or tribal organizations.

10 “(C) SUBMISSION OF INFORMATION.—To
11 receive a payment under this paragraph, the
12 tribe or tribal organization shall submit such
13 figures to the Secretary of the Interior as re-
14 quired to determine the amounts to be allocated
15 under subparagraph (B). This information shall
16 be compiled and submitted to the Secretary of
17 Education.

18 “(D) USE OF FUNDS.—The funds received
19 by a tribe or tribal organization shall be used
20 to assist in child find, screening, and other pro-
21 cedures for the early identification of children
22 aged 3 to 5, inclusive, parent training, and the
23 provision of direct services. These activities may
24 be carried out directly or through contracts or

1 cooperative agreements with the BIA, local edu-
2 cational agencies, and other public or private
3 nonprofit organizations. The tribe or tribal or-
4 ganization is encouraged to involve Indian par-
5 ents in the development and implementation of
6 these activities. The above entities shall, as ap-
7 propriate, make referrals to local, State, or
8 Federal entities for the provision of services or
9 further diagnosis.

10 “(E) BIENNIAL REPORT.—To be eligible to
11 receive a grant pursuant to subparagraph (A),
12 the tribe or tribal organization shall provide to
13 the Secretary of the Interior a biennial report
14 of activities undertaken under this paragraph,
15 including the number of contracts and coopera-
16 tive agreements entered into, the number of
17 children contacted and receiving services for
18 each year and the estimated number of children
19 needing services during the 2 years following
20 the one in which the report is made. The Sec-
21 retary of the Interior shall include a summary
22 of this information on a biennial basis in the re-
23 port to the Secretary of Education required

1 under this subsection. The Secretary of Edu-
2 cation may require any additional information
3 from the Secretary of the Interior.

4 “(F) PROHIBITIONS.—None of the funds
5 allocated under this paragraph may be used by
6 the Secretary of the Interior for administrative
7 purposes, including child count and the provi-
8 sion of technical assistance.

9 “(4) PLAN FOR COORDINATION OF SERVICES.—
10 The Secretary of the Interior shall develop and im-
11 plement a plan for the coordination of services for
12 all Indian children with disabilities residing on res-
13 ervations covered under this Act. Such plan shall
14 provide for the coordination of services benefiting
15 these children from whatever source, including
16 tribes, the Indian Health Service, other BIA divi-
17 sions, and other Federal agencies. In developing
18 such a plan, the Secretary of the Interior shall con-
19 sult with all interested and involved parties. It shall
20 be based upon the needs of the children and the sys-
21 tem best suited for meeting those needs, and may in-
22 volve the establishment of cooperative agreements
23 between the BIA, other Federal agencies, and other
24 entities. Such plan shall also be distributed upon re-
25 quest to States, State and local educational agencies,

1 and other agencies providing services to infants, tod-
2 dlers, children, and youth with disabilities, to tribes,
3 and to other interested parties.

4 “(5) ESTABLISHMENT OF ADVISORY BOARD.—

5 To meet the requirements of section 612(a)(18), the
6 Secretary of the Interior shall establish, not later
7 than 6 months after the date of the enactment of
8 the IDEA Improvement Act of 1997, under the Bu-
9 reau of Indian Affairs (BIA), an advisory board
10 composed of individuals involved in or concerned
11 with the education and provision of services to In-
12 dian infants, toddlers, children, and youth with dis-
13 abilities, including Indians with disabilities, Indian
14 parents or guardians of such children, teachers,
15 service providers, State and local educational offi-
16 cials, representatives of tribes or tribal organiza-
17 tions, representatives from State Interagency Co-
18 ordinating Councils in States having reservations,
19 and other members representing the various divi-
20 sions and entities of the BIA. The chairperson shall
21 be selected by the Secretary of the Interior. The ad-
22 visory board shall—

23 “(A) assist in the coordination of services

24 within BIA and with other local, State, and

25 Federal agencies in the provision of education

1 for infants, toddlers, children, and youth with
2 disabilities;

3 “(B) advise and assist the Secretary of the
4 Interior in the performance of the Secretary’s
5 responsibilities described in this subsection;

6 “(C) develop and recommend policies con-
7 cerning effective inter- and intra-agency collabo-
8 ration, including modifications to regulations,
9 and the elimination of barriers to inter- and
10 intra-agency programs and activities;

11 “(D) provide assistance and disseminate
12 information on best practices, effective program
13 coordination strategies, and recommendations
14 for improved educational programming for In-
15 dian infants, toddlers, children, and youth with
16 disabilities; and

17 “(E) provide assistance in the preparation
18 of information required under paragraph
19 (2)(D).

20 “(6) ANNUAL REPORTS.—

21 “(A) IN GENERAL.—The advisory board
22 established under paragraph (5) shall prepare
23 and submit to the Secretary of the Interior and
24 to the Congress an annual report containing a

1 description of the activities of the advisory
2 board for the preceding year.

3 “(B) AVAILABILITY.—The Secretary of the
4 Interior shall make available to the Secretary of
5 Education the report described in subparagraph
6 (A).

7 “(e) AUTHORIZATION OF APPROPRIATIONS.—For the
8 purpose of carrying out this part (except for section 619;
9 relating to preschool grants), there are authorized to be
10 appropriated to the Secretary such sums as may be nec-
11 essary.

12 **“SEC. 612. STATE REQUIREMENTS.**

13 “(a) IN GENERAL.—A State shall be eligible to re-
14 ceive a grant under this part for a fiscal year if, except
15 as provided in subsection (c), the State submits to the Sec-
16 retary information that demonstrates to the satisfaction
17 of the Secretary that the State has in effect policies and
18 procedures to ensure that it meets each of the following
19 requirements:

20 “(1) FREE APPROPRIATE PUBLIC EDU-
21 CATION.—

22 “(A) IN GENERAL.—A free appropriate
23 public education is available to all children with
24 disabilities residing in the State between the
25 ages of 3 and 21, inclusive.

1 “(B) LIMITATION.—Subparagraph (A)
2 shall not apply with respect to children with
3 disabilities aged 3 to 5 and children with dis-
4 abilities aged 18 to 21 to the extent that such
5 application to those children would be inconsis-
6 tent with State law or practice, or the order of
7 any court, relating to the provision of public
8 education to children in such age ranges.

9 “(2) CHILD FIND.—All children with disabilities
10 residing in the State, including children with disabil-
11 ities attending private schools, regardless of the se-
12 verity of such disabilities, and who are in need of
13 special education and related services, are identified,
14 located, and evaluated and that a practical method
15 is developed and implemented to determine which
16 children with disabilities are currently receiving
17 needed special education and related services.

18 “(3) INDIVIDUALIZED EDUCATION PROGRAM.—
19 An individualized education program, or an individ-
20 ualized family service plan that meets the require-
21 ments of section 636(d), is developed, reviewed, and
22 revised for each child with a disability in accordance
23 with section 614(d).

24 “(4) LEAST RESTRICTIVE ENVIRONMENT.—

1 “(A) IN GENERAL.—To the maximum ex-
2 tent appropriate—

3 “(i) children with disabilities, includ-
4 ing children in public or private institu-
5 tions or other care facilities, are educated
6 with children who are not disabled; and

7 “(ii) special classes, separate school-
8 ing, or other removal of children with dis-
9 abilities from the regular educational envi-
10 ronment occurs only when the nature or
11 severity of the disability of a child means
12 that education in regular classes with the
13 use of supplementary aids and services
14 cannot be achieved satisfactorily.

15 “(B) ADDITIONAL REQUIREMENT.—

16 “(i) IN GENERAL.—The State’s meth-
17 od of distributing funds shall not result in
18 placements that violate the requirements of
19 subparagraph (A).

20 “(ii) EXCEPTION.—If the State does
21 not have policies and procedures to ensure
22 compliance with clause (i), the State shall
23 provide the Secretary an assurance that it
24 will revise the funding mechanism as soon

1 as feasible to ensure that such mechanism
2 does not result in such placements.

3 “(5) PROCEDURAL SAFEGUARDS.—

4 “(A) IN GENERAL.—Children with disabil-
5 ities and their parents are afforded the proce-
6 dural safeguards required by section 615.

7 “(B) ADDITIONAL PROCEDURAL SAFE-
8 GUARDS.—Procedures to assure that testing
9 and evaluation materials and procedures uti-
10 lized for the purposes of evaluation and place-
11 ment of children with disabilities will be se-
12 lected and administered so as not to be racially
13 or culturally discriminatory. Such materials or
14 procedures shall be provided and administered
15 in the child’s native language or mode of com-
16 munication, unless it clearly is not feasible to
17 do so, and no single procedure shall be the sole
18 criterion for determining an appropriate edu-
19 cational program for a child.

20 “(6) EVALUATION.—Children with disabilities
21 are evaluated in accordance with subsections (a)
22 through (c) of section 614.

23 “(7) CONFIDENTIALITY.—Agencies in the State
24 comply with section 617(c) (relating to the confiden-
25 tiality of records and information).

1 “(8) TRANSITION FROM PART C TO PRESCHOOL
2 PROGRAMS.—Children participating in early-inter-
3 vention programs assisted under part C, and who
4 will participate in preschool programs assisted under
5 this part, experience a smooth transition to those
6 preschool programs in a manner consistent with sec-
7 tion 637(a)(7). By the third birthday of such a
8 child, an individualized education program or, if con-
9 sistent with sections 614(d)(1)(B) and 636(d), an
10 individualized family service plan, has been devel-
11 oped and is being implemented for the child. The
12 local educational agency will participate in transition
13 planning conferences by the designated lead agency
14 under section 637(a)(7).

15 “(9) CHILDREN IN PRIVATE SCHOOLS.—

16 “(A) IN GENERAL.—To the extent consist-
17 ent with the number and location of children
18 with disabilities in the State who are enrolled in
19 private elementary and secondary schools, pro-
20 vision is made for the participation of such chil-
21 dren in the program assisted or carried out
22 under this part by providing for such children
23 special education and related services, except if
24 the Secretary has arranged for services to such
25 children under subsection (f).

1 “(B) CHILDREN PLACED IN, OR REFERRED
2 TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES.—

3 “(i) IN GENERAL.—Children with dis-
4 abilities in private schools and facilities are
5 provided special education and related
6 services, in accordance with an individual-
7 ized education program, at no cost to their
8 parents, if they are placed in, or referred
9 to, such schools or facilities by the State or
10 a local educational agency in order to com-
11 ply with this part or with any other provi-
12 sion of law requiring the provision of spe-
13 cial education and related services to all
14 children with disabilities in the State.

15 “(ii) ADDITIONAL REQUIREMENTS.—
16 In all cases described in clause (i)—

17 “(I) children with disabilities are
18 placed in, or referred to, only those
19 private schools and facilities that the
20 State educational agency determines
21 meet standards that apply to State
22 and local educational agencies; and

23 “(II) children served in such pri-
24 vate schools or facilities retain access

1 to a free appropriate public education
2 in accordance with this part.

3 “(C) PAYMENT FOR EDUCATION OF CHIL-
4 DREN PLACED IN PRIVATE SCHOOLS WITHOUT
5 CONSENT OF OR REFERRAL BY THE PUBLIC
6 AGENCY.—

7 “(i) IN GENERAL.—If the parents of a
8 child with a disability that had previously
9 received special education and related serv-
10 ices under the authority of a public agency
11 have enrolled their child in a private ele-
12 mentary or secondary school without the
13 consent of or referral by the public agency,
14 as a result of mediation described in sec-
15 tion 615(d), or as a result of a decision
16 rendered under the procedural safeguards
17 of section 615, the public agency may be
18 required to reimburse the parents for the
19 cost of the enrollment, except that the cost
20 of the reimbursement may be reduced or
21 denied—

22 “(I) if, at least 10 school days
23 prior to the removal of the child from
24 the public school, the parents did not

1 give a written statement of their con-
2 cerns to the public agency and notice
3 that they intend to place their child in
4 a private school at public expense;

5 “(II) if, prior to the removal of
6 the child from the public school, the
7 parents did not make the child avail-
8 able for an initial assessment and
9 evaluation by the local educational
10 agency prior to enrollment in the pri-
11 vate school; or

12 “(III) at the discretion of the
13 judge.

14 “(ii) EXCEPTION.—Notwithstanding
15 the notice requirement in clause (i)(I), the
16 cost of the reimbursement may not be re-
17 duced or denied for failure to provide such
18 notice if—

19 “(I) the parent is illiterate or
20 cannot write in English;

21 “(II) compliance with clause
22 (i)(I) would likely result in physical or
23 serious emotional harm to the child;

24 “(III) the school prevented the
25 parent from providing such notice; or

1 “(IV) the parent had not received
2 notice, pursuant to section 615(d), of
3 the notice requirement in clause (i)(I).

4 “(10) STATE EDUCATIONAL AGENCY RESPON-
5 SIBLE FOR GENERAL SUPERVISION.—

6 “(A) IN GENERAL.—The State educational
7 agency is responsible for ensuring that—

8 “(i) the requirements of this part are
9 met; and

10 “(ii) all educational programs for chil-
11 dren with disabilities in the State, includ-
12 ing all such programs administered by any
13 other State or local agency—

14 “(I) are under the general super-
15 vision of individuals in the State who
16 are responsible for educational pro-
17 grams for children with disabilities;
18 and

19 “(II) meet the educational stand-
20 ards of the State educational agency.

21 “(B) LIMITATION.—Subparagraph (A)
22 shall not limit the responsibility of agencies in
23 the State other than the State educational
24 agency to provide, or pay for some or all of the

1 costs of, a free appropriate public education for
2 any child with a disability in the State.

3 “(11) OBLIGATIONS RELATED TO AND METH-
4 ODS OF ENSURING SERVICES.—

5 “(A) ESTABLISHING RESPONSIBILITY FOR
6 SERVICES.—The Chief Executive Officer or des-
7 ignee of the officer shall ensure that an inter-
8 agency agreement or other mechanism for inter-
9 agency coordination is in effect between each
10 public agency described in subparagraph (B)
11 and the appropriate educational agency within
12 the State, in order to ensure that all services
13 described in subparagraph (B)(i) that are need-
14 ed to ensure a free appropriate public education
15 are provided, including the provision of such
16 services during the pendency of any dispute
17 under clause (iii). Such agreement or mecha-
18 nism shall include the following:

19 “(i) AGENCY FINANCIAL RESPON-
20 SIBILITY.—An identification of, or a meth-
21 od for defining, the financial responsibility
22 of each agency for providing services de-
23 scribed in subparagraph (B)(i) to ensure a

1 free appropriate public education to chil-
2 dren with disabilities provided that the fi-
3 nancial responsibility of each public agency
4 described in subparagraph (B), including
5 the State Medicaid agency and other public
6 insurers of children with disabilities, shall
7 precede the financial responsibility of the
8 local education agency (or the State agency
9 responsible for developing the child's IEP).

10 “(ii) CONDITIONS AND TERMS OF RE-
11 IMBURSEMENT.—The conditions, terms,
12 and procedures under which a local edu-
13 cational agency shall be reimbursed by
14 other agencies.

15 “(iii) INTERAGENCY DISPUTES.—Pro-
16 cedures for resolving interagency disputes
17 (including procedures under which local
18 education agencies may initiate proceed-
19 ings) under the agreement or other mecha-
20 nism to secure reimbursement from other
21 agencies or otherwise implement the provi-
22 sions of the agreement or mechanism.

23 “(iv) COORDINATION OF SERVICES
24 PROCEDURES.—Policies and procedures for
25 agencies to determine and identify the

1 interagency coordination responsibilities of
2 each agency to promote the coordination
3 and timely and appropriate delivery of
4 services described in subparagraph (B)(i).

5 “(B) OBLIGATION OF PUBLIC AGENCY.—

6 “(i) IN GENERAL.—If any public
7 agency other than an educational agency is
8 otherwise obligated under Federal or State
9 law, or assigned responsibility under State
10 policy or pursuant to subparagraph (A), to
11 provide or pay for any services that are
12 also considered special education or related
13 services (such as, but not limited to, serv-
14 ices described in sections 602(1) relating
15 to assistive technology devices, 602(2) re-
16 lating to assistive technology services,
17 602(20) relating to related services,
18 602(27) related to supplementary aids and
19 services, and 602(29) relating to transition
20 services) that are necessary for ensuring a
21 free appropriate public education to chil-
22 dren with disabilities within the State,
23 such public agency shall fulfill that obliga-
24 tion or responsibility, either directly or
25 through contract or other arrangement.

1 “(ii) REIMBURSEMENT FOR SERVICES
2 BY PUBLIC AGENCY.—If a public agency
3 other than an educational agency fails to
4 provide or pay for the special education
5 and related services described in clause (i),
6 the local educational agency (or State
7 agency responsibility for developing the
8 child’s IEP) shall provide or pay for such
9 services to the child. Such local education
10 agency or State agency may then claim re-
11 imbursement for the services from the pub-
12 lic agency that failed to provide or pay for
13 such services and such public agency shall
14 reimburse the local education agency or
15 State agency pursuant to the terms of the
16 interagency agreement described in sub-
17 paragraph (A)(i) according to the proce-
18 dures established in such agreement pursu-
19 ant to subparagraph (A)(ii).

20 “(C) SPECIAL RULE.—The requirements of
21 subparagraph (A) may be met through—

22 “(i) State statute or regulation;

1 “(ii) signed agreements between re-
2 spective agency officials that clearly iden-
3 tify the responsibilities of each agency re-
4 lating to the provision of services; or

5 “(iii) other appropriate methods as
6 determined by the Chief Executive Officer
7 or designee of the officer.

8 “(12) PROCEDURAL REQUIREMENTS RELATING
9 TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY.—

10 The State educational agency will not make a final
11 determination that a local educational agency is not
12 eligible for assistance under this part without first
13 affording that agency reasonable notice and an op-
14 portunity for a hearing.

15 “(13) COMPREHENSIVE SYSTEM OF PERSONNEL
16 DEVELOPMENT.—The State has established and im-
17 plemented, consistent with the purposes of this title
18 and section 635(a)(7), a comprehensive system of
19 personnel development that is designed to ensure an
20 adequate supply of qualified special education and
21 related services personnel necessary to carry out this
22 part, including—

1 “(A) a statewide, coordinated personnel-de-
2 velopment plan that meets the personnel devel-
3 opment requirements of a State improvement
4 plan under section 683; or

5 “(B) a personnel-development plan, devel-
6 oped in consultation with parents of children
7 with disabilities, State and local educational
8 agencies, institutions of higher education, and
9 professional associations that—

10 “(i) addresses current and projected
11 needs for special education and related
12 services personnel throughout the State;

13 “(ii) addresses the need for the pre-
14 service and in-service preparation of per-
15 sonnel throughout the State, including reg-
16 ular education personnel, to provide edu-
17 cational services to children with disabil-
18 ities;

19 “(iii) includes a system or procedures
20 for recruiting, preparing, and retaining
21 qualified personnel, including personnel
22 with disabilities and personnel from groups
23 that are underrepresented in the field of
24 special education and related services; and

1 “(iv) is integrated, to the maximum
2 extent possible, with other professional de-
3 velopment plans and activities.

4 “(14) PERSONNEL STANDARDS.—

5 “(A) IN GENERAL.—The State educational
6 agency has established and maintains standards
7 to ensure that personnel necessary to carry out
8 this part are appropriately and adequately pre-
9 pared and trained.

10 “(B) STANDARDS DESCRIBED.—Such
11 standards shall—

12 “(i) be consistent with any State-ap-
13 proved or State-recognized certification, li-
14 censing, registration, or other comparable
15 requirements that apply to the professional
16 discipline in which those personnel are pro-
17 viding special education or related services;

18 “(ii) to the extent the standards de-
19 scribed in subparagraph (A) are not based
20 on the highest requirements in the State
21 applicable to a specific profession or dis-
22 cipline, the State is taking steps to require
23 retraining or hiring of personnel that meet
24 appropriate professional requirements in
25 the State; and

1 “(iii) allow paraprofessionals and as-
2 sistants who are appropriately trained and
3 supervised, in accordance with State law,
4 regulations, or written policy, in meeting
5 the requirements of this part to be used to
6 assist in the provision of special education
7 and related services to children with dis-
8 abilities under this part.

9 “(C) EXCEPTION.—If the State determines
10 that, within a geographic area of the State
11 there is a shortage of an appropriate number
12 and type of personnel to provide the special
13 education and related services to children with
14 disabilities within such area, and the appro-
15 priate public agency has taken steps to recruit
16 and hire such personnel, the State may, subject
17 to public comment and review, temporarily sus-
18 pend the standards of subparagraph (B)(ii)—

19 “(i) consistent with State law, for the
20 purpose of recruiting and hiring for such
21 shortage areas the most qualified available
22 individuals who are making progress in ap-
23 plicable coursework; and

24 “(ii) for a period not to exceed 3
25 years.

1 “(15) PERFORMANCE GOALS AND INDICA-
2 TORS.—The State—

3 “(A) has established goals for the perform-
4 ance of children with disabilities in the State
5 that—

6 “(i) will promote the purposes of this
7 title, as stated in section 601(d); and

8 “(ii) are consistent, to the maximum
9 extent appropriate, with other goals and
10 standards established by the State;

11 “(B) has established performance indica-
12 tors the State will use to assess progress toward
13 achieving those goals that, at a minimum, ad-
14 dress the performance of children with disabili-
15 ties on assessments, drop-out rates, and grad-
16 uation rates;

17 “(C) will, every two years, report to the
18 Secretary and the public on the progress of the
19 State, and of children with disabilities in the
20 State, toward meeting the goals established
21 under subparagraph (A); and

22 “(D) based on its assessment of that
23 progress, will revise its State improvement plan
24 under part D as may be needed to improve its

1 performance, if the State receives assistance
2 under such part.

3 “(16) PARTICIPATION IN ASSESSMENTS.—

4 “(A) IN GENERAL.—Children with disabil-
5 ities are included in general State and district-
6 wide assessment programs, with appropriate ac-
7 commodations, where necessary. As appro-
8 priate, the State or local educational agency—

9 “(i) develops guidelines for the par-
10 ticipation of children with disabilities in al-
11 ternate assessments for those children who
12 cannot participate in State and district-
13 wide assessment programs; and

14 “(ii) develops and, beginning not later
15 than July 1, 2000, conducts those alter-
16 nate assessments.

17 “(B) REPORTS.—The State educational
18 agency makes available to the public, and re-
19 ports to the public with the same frequency and
20 in the same detail as it reports on the assess-
21 ment of nondisabled children, the following:

22 “(i) The number of children with dis-
23 abilities participating in regular assess-
24 ments.

1 “(ii) The number of those children
2 participating in alternate assessments.

3 “(iii) The performance of those chil-
4 dren on regular assessments (beginning
5 not later than July 1, 1998) and on alter-
6 nate assessments (not later than July 1,
7 2000), if doing so would be statistically
8 sound and would not result in the disclo-
9 sure of performance results identifiable to
10 individual children.

11 “(17) SUPPLEMENTATION OF STATE, LOCAL,
12 AND OTHER FEDERAL FUNDS.—

13 “(A) IN GENERAL.—The State ensures
14 that amounts provided under a grant to the
15 State under this part, except as provided in
16 subparagraph (B), will be used to supplement
17 State, local, and other Federal funds (including
18 funds not under the direct control of State or
19 local educational agencies) expended for special
20 education and related services, and not to sup-
21 plant those funds.

22 “(B) WAIVER.—The Secretary may waive,
23 in whole or in part, the requirements of sub-
24 paragraph (A) if the Secretary determines that
25 the State has provided clear evidence that all

1 children with disabilities in the State have avail-
2 able a free appropriate public education or that,
3 such a waiver would allow the State to improve
4 the delivery of special education and related
5 services to children with disabilities in the
6 State.

7 “(18) PUBLIC PARTICIPATION.—Prior to the
8 adoption of any policies and procedures needed to
9 comply with this section (including any amendments
10 to such policies and procedures), the State ensures
11 that there are public hearings, adequate notice of
12 the hearings, and an opportunity for comment avail-
13 able to the general public, including individuals with
14 disabilities and parents of children with disabilities.

15 “(19) STATE ADVISORY PANEL.—

16 “(A) IN GENERAL.—The State has estab-
17 lished and maintains an advisory panel for the
18 purpose of providing policy guidance with re-
19 spect to special education and related services
20 for children with disabilities in the State.

21 “(B) MEMBERSHIP.—Such advisory panel
22 shall consist of members appointed by the Gov-
23 ernor, or any other official authorized under
24 State law to make such appointments, that is
25 representative of the State population and that

1 is composed of individuals involved in, or con-
2 cerned with, the education of children with dis-
3 abilities, including—

4 “(i) parents of children with disabil-
5 ities;

6 “(ii) individuals with disabilities;

7 “(iii) teachers;

8 “(iv) representatives of institutions of
9 higher education that prepare special edu-
10 cation and related services personnel;

11 “(v) State and local education offi-
12 cials;

13 “(vi) administrators of programs for
14 children with disabilities;

15 “(vii) representatives of other State
16 agencies involved in the financing or deliv-
17 ery of related services to children with dis-
18 abilities;

19 “(viii) representatives of private and
20 charter schools;

21 “(ix) at least one representative of a
22 vocational, community, or business organi-
23 zation concerned with the provision of
24 transition services to children with disabil-
25 ities; and

1 “(x) representatives from the State
2 juvenile and adult corrections agencies.

3 “(C) SPECIAL RULE.—A majority of the
4 members of the panel shall be individuals with
5 disabilities or parents of children with disabili-
6 ties.

7 “(D) DUTIES.—The advisory panel shall—

8 “(i) advise the State educational agen-
9 cy of unmet needs within the State in the
10 education of children with disabilities;

11 “(ii) comment publicly on any rules or
12 regulations proposed by the State regard-
13 ing—

14 “(I) the education of children
15 with disabilities; and

16 “(II) the procedures for distribu-
17 tion of amounts received by the State
18 under a grant under this part;

19 “(iii) advise the State educational
20 agency in developing evaluations and re-
21 porting on data to the Secretary under sec-
22 tion 618;

23 “(iv) advise the State educational
24 agency in developing corrective action

1 plans to address findings identified in Fed-
 2 eral monitoring reports under this part;
 3 and

4 “(v) advise the State educational
 5 agency in developing and implementing
 6 policies relating to the coordination of serv-
 7 ices for children with disabilities.

8 “(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF
 9 FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT
 10 SERVICES.—If the State educational agency provides free
 11 appropriate public education to children with disabilities,
 12 or provides direct services to such children, such agency—

13 “(1) shall comply with any additional require-
 14 ments of section 613(a), as if such agency were a
 15 local educational agency; and

16 “(2) may use amounts that are otherwise avail-
 17 able to such agency under this part to serve those
 18 children without regard to section 613(a)(2)(A)(i)
 19 (relating to excess costs).

20 “(c) EXCEPTION FOR PRIOR STATE PLANS.—

21 “(1) IN GENERAL.—If a State has on file with
 22 the Secretary policies and procedures that dem-
 23 onstrate that such State meets any requirement of
 24 subsection (a), including any policies and procedures
 25 filed under this part as in effect before the date of

1 the enactment of the IDEA Improvement Act of
2 1997, the Secretary shall consider such State to
3 have met such requirement for purposes of receiving
4 a grant under this part.

5 “(2) MODIFICATIONS MADE BY STATE.—Sub-
6 ject to paragraph (3), an application submitted by a
7 State in accordance with this section shall remain in
8 effect until the State submits to the Secretary such
9 modifications as the State deems necessary. This
10 section shall apply to a modification to an applica-
11 tion to the same extent and in the same manner as
12 this section applies to the original plan.

13 “(3) MODIFICATIONS REQUIRED BY THE SEC-
14 RETARY.—The Secretary may require a State to
15 amend its application at any time as a result of the
16 Secretary’s compliance reviews under parts B and C.
17 The Secretary shall reduce or shall not provide any
18 further payments to the State educational agency
19 until the Secretary is satisfied that the State edu-
20 cational agency is complying with that requirement.

21 “(d) APPROVAL BY THE SECRETARY.—

22 “(1) IN GENERAL.—If the Secretary determines
23 that a State is eligible to receive a grant under this
24 part, the Secretary shall notify the State of that de-
25 termination.

1 “(2) NOTICE AND HEARING.—The Secretary
 2 shall not make a final determination that a State is
 3 not eligible to receive a grant under this part until
 4 after providing the State—

5 “(A) with reasonable notice; and

6 “(B) with an opportunity for a hearing.

7 “(e) ASSISTANCE UNDER OTHER FEDERAL PRO-
 8 GRAMS.—Nothing in this title permits a State to reduce
 9 medical and other assistance available, or to alter eligi-
 10 bility, under titles V and XIX of the Social Security Act
 11 with respect to the provision of a free appropriate public
 12 education for children with disabilities within the State.

13 “(f) BY-PASS FOR CHILDREN IN PRIVATE
 14 SCHOOLS.—

15 “(1) IN GENERAL.—If, on the date of enact-
 16 ment of the Education of the Handicapped Act
 17 Amendments of 1983, a State educational agency is
 18 prohibited by law from providing for the participa-
 19 tion in special programs of children with disabilities
 20 enrolled in private elementary and secondary schools
 21 as required by subsection (a)(9), the Secretary shall,
 22 notwithstanding such provision of law, arrange for
 23 the provision of services to such children through ar-
 24 rangements which shall be subject to the require-
 25 ments of such subsection.

1 “(2) PAYMENTS.—

2 “(A) DETERMINATION OF AMOUNTS.—If
3 the Secretary arranges for services pursuant to
4 this subsection, the Secretary, after consulta-
5 tion with the appropriate public and private
6 school officials, shall pay to the provider of such
7 services for a fiscal year an amount per child
8 that does not exceed the amount determined by
9 dividing—

10 “(i) the total amount received by the
11 State under this part for such fiscal year;
12 by

13 “(ii) the number of children with dis-
14 abilities served in the prior year, as re-
15 ported to the Secretary by the State under
16 section 618.

17 “(B) WITHHOLDING OF CERTAIN
18 AMOUNTS.—Pending final resolution of any in-
19 vestigation or complaint that could result in a
20 determination under this subsection, the Sec-
21 retary may withhold from the allocation of the
22 affected State educational agency the amount
23 the Secretary estimates would be necessary to
24 pay the cost of services described in subpara-
25 graph (A).

1 “(C) PERIOD OF PAYMENTS.—The period
2 under which payments are made under sub-
3 paragraph (A) shall continue until the Sec-
4 retary determines that there will no longer be
5 any failure or inability on the part of the State
6 educational agency to meet the requirements of
7 subsection (a)(9).

8 “(3) NOTICE AND HEARING.—

9 “(A) IN GENERAL.—The Secretary shall
10 not take any final action under this subsection
11 until the State educational agency affected by
12 such action has had an opportunity, for at least
13 45 days after receiving written notice thereof,
14 to submit written objections and to appear be-
15 fore the Secretary or the Secretary’s designee
16 to show cause why such action should not be
17 taken.

18 “(B) REVIEW OF ACTION.—If a State edu-
19 cational agency is dissatisfied with the Sec-
20 retary’s final action after a proceeding under
21 subparagraph (A), such agency may, not later
22 than 60 days after notice of such action, file
23 with the United States court of appeals for the
24 circuit in which such State is located a petition
25 for review of that action. A copy of the petition

1 shall be forthwith transmitted by the clerk of
2 the court to the Secretary. The Secretary there-
3 upon shall file in the court the record of the
4 proceedings on which the Secretary based the
5 Secretary's action, as provided in section 2112
6 of title 28, United States Code.

7 “(C) REVIEW OF FINDINGS OF FACT.—The
8 findings of fact by the Secretary, if supported
9 by substantial evidence, shall be conclusive, but
10 the court, for good cause shown, may remand
11 the case to the Secretary to take further evi-
12 dence, and the Secretary may thereupon make
13 new or modified findings of fact and may mod-
14 ify the Secretary's previous action, and shall file
15 in the court the record of the further proceed-
16 ings. Such new or modified findings of fact
17 shall likewise be conclusive if supported by sub-
18 stantial evidence.

19 “(D) JURISDICTION OF COURT OF AP-
20 PEALS; REVIEW BY UNITED STATES SUPREME
21 COURT.—Upon the filing of a petition under
22 subparagraph (B), the United States court of
23 appeals shall have jurisdiction to affirm the ac-
24 tion of the Secretary or to set it aside, in whole
25 or in part. The judgment of the court shall be

1 subject to review by the Supreme Court of the
2 United States upon certiorari or certification as
3 provided in section 1254 of title 28, United
4 States Code.

5 **“SEC. 613. LOCAL EDUCATIONAL AGENCY REQUIREMENTS.**

6 “(a) IN GENERAL.—A local educational agency shall
7 be eligible for assistance under this part for any fiscal year
8 if, except as provided in subsection (b), such agency sub-
9 mits to the State educational agency information that
10 demonstrates to the satisfaction of the State educational
11 agency the following:

12 “(1) CONSISTENCY WITH STATE POLICIES.—

13 The local educational agency, in providing for the
14 education of children with disabilities within its ju-
15 risdiction, has in effect policies, procedures, and pro-
16 grams that are consistent with the State policies and
17 procedures established under section 612.

18 “(2) USE OF AMOUNTS.—

19 “(A) IN GENERAL.—Amounts provided to
20 the local educational agency under this part—

21 “(i) shall be used only to pay the ex-
22 cess costs of providing special education
23 and related services to children with dis-
24 abilities;

1 “(ii) shall be used to supplement
2 State, local, and other Federal funds and
3 not to supplant such funds;

4 “(iii) except as provided in subpara-
5 graph (B), may not be used to reduce the
6 level of expenditures for the education of
7 children with disabilities made by the local
8 educational agency from State or local
9 funds below the level of those expenditures
10 for the preceding fiscal year;

11 “(iv) may be used, notwithstanding
12 clause (i) or any other provision of this
13 part, for the costs of special education and
14 related services provided in a regular class
15 or other education related setting to a
16 child with a disability in accordance with
17 the child’s individualized education pro-
18 gram, even if one or more nondisabled chil-
19 dren benefit from those services; and

20 “(v) may be used, in accordance with
21 subsection (f) and notwithstanding clause
22 (i) or any other provision of this part, to
23 develop and implement a coordinated serv-
24 ices system.

1 “(B) EXCEPTION.—Notwithstanding the
2 restriction in subparagraph (A)(iii), a local edu-
3 cation agency may reduce the level of expendi-
4 tures where such reduction is attributable to—

5 “(i) the departure, by retirement or
6 otherwise, of special education personnel;

7 “(ii) a decrease in the enrollment of
8 children with disabilities;

9 “(iii) the termination of the obligation
10 of the agency, consistent with this part, to
11 provide a program of special education to
12 a particular child with a disability that is
13 an exceptionally costly program, as deter-
14 mined by the State educational agency, be-
15 cause the child—

16 “(I) has left the jurisdiction of
17 the agency;

18 “(II) has reached the age at
19 which the obligation of the agency to
20 provide a free appropriate public edu-
21 cation to the child has terminated; or

22 “(III) no longer needs such pro-
23 gram of special education; or

24 “(iv) the termination of costly expend-
25 itures for long-term purchases, such as the

1 acquisition of equipment or the construc-
2 tion of school facilities.

3 “(3) INFORMATION FOR STATE EDUCATIONAL
4 AGENCY.—The local educational agency shall provide
5 the State educational agency with information nec-
6 essary to enable the State educational agency to
7 carry out its duties under this part, including, with
8 respect to paragraphs (14) and (15) of section
9 612(a), information relating to the performance of
10 children with disabilities participating in programs
11 carried out under this part.

12 “(4) PUBLIC INFORMATION.—The local edu-
13 cational agency shall make available to parents of
14 children with disabilities and to the general public
15 all documents relating to the eligibility of such agen-
16 cy under this part.

17 “(b) EXCEPTION FOR PRIOR LOCAL PLANS.—

18 “(1) IN GENERAL.—If a local educational agen-
19 cy or State agency has on file with the State edu-
20 cational agency policies and procedures that dem-
21 onstrate that such local educational agency, or such
22 State agency, as the case may be, meets any require-
23 ment of subsection (a), including any policies and
24 procedures filed under this part as in effect before
25 the date of the enactment of IDEA Improvement

1 Act of 1997, the State educational agency shall con-
2 sider such local educational agency or State agency,
3 as the case may be, to have met such requirement
4 for purposes of receiving assistance under this part.

5 “(2) MODIFICATION MADE BY LOCAL EDU-
6 CATIONAL AGENCY.—Subject to paragraph (3), an
7 application submitted by a local educational agency
8 in accordance with this section shall remain in effect
9 until the such agency submits to the State edu-
10 cational agency such modifications as the local edu-
11 cational agency deems necessary.

12 “(3) MODIFICATIONS REQUIRED BY STATE
13 EDUCATIONAL AGENCY.—The State educational
14 agency may require a local educational agency to
15 amend its application at anytime as a result of the
16 compliance reviews of the State educational agency
17 under parts B and C. This paragraph shall apply to
18 a modification to an application to the same extent
19 and in the same manner as this section applies to
20 the original plan.

21 “(c) NOTIFICATION OF LOCAL EDUCATIONAL AGEN-
22 CY OR STATE AGENCY IN CASE OF INELIGIBILITY.—If the
23 State educational agency determines that a local edu-
24 cational agency or State agency is not eligible under this
25 section, the State educational agency shall notify such

1 local educational agency or State agency, as the case may
2 be, of that determination and shall provide such local edu-
3 cational agency or State agency with reasonable notice and
4 an opportunity for a hearing.

5 “(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE.—

6 “(1) IN GENERAL.—If the State educational
7 agency, after reasonable notice and an opportunity
8 for a hearing, finds that a local educational agency
9 or State agency that has been determined to be eligi-
10 ble under this section is failing to comply with any
11 requirement described in subsection (a), the State
12 educational agency shall reduce or shall not provide
13 any further payments to the local educational agency
14 or State agency until the State educational agency
15 is satisfied that the local educational agency or State
16 agency, as the case may be, is complying with that
17 requirement.

18 “(2) ADDITIONAL REQUIREMENT.—Any State
19 agency or local educational agency in receipt of a no-
20 tice described in paragraph (1) shall, by means of
21 public notice, take such measures as may be nec-
22 essary to bring the pendency of an action pursuant
23 to this subsection to the attention of the public with-
24 in the jurisdiction of such agency.

1 “(3) CONSIDERATION.—In carrying out its re-
2 sponsibilities under paragraph (1), the State edu-
3 cational agency shall consider any decision made in
4 a hearing held under section 615 that is adverse to
5 the local educational agency or State agency involved
6 in that decision.

7 “(e) JOINT ESTABLISHMENT OF ELIGIBILITY.—

8 “(1) IN GENERAL.—A State educational agency
9 may require a local educational agency to establish
10 its eligibility jointly with another local educational
11 agency if the State educational agency determines
12 that the local educational agency would be ineligible
13 under this section because the local educational
14 agency would not be able to establish and maintain
15 programs of sufficient size and scope to effectively
16 meet the needs of children with disabilities.

17 “(2) AMOUNT OF PAYMENTS.—If a State edu-
18 cational agency requires the joint establishment of
19 eligibility under paragraph (1), the total amount of
20 funds made available to the affected local edu-
21 cational agencies shall be equal to the sum of the
22 payments that each such local educational agency
23 would have received under section 611(c) if such
24 agencies were eligible for such payments.

1 “(3) REQUIREMENTS.—Local educational agen-
2 cies that establish joint eligibility under this sub-
3 section shall—

4 “(A) adopt policies and procedures that
5 are consistent with the State’s policies and pro-
6 cedures under section 612(a); and

7 “(B) be jointly responsible for implement-
8 ing programs that receive assistance under this
9 part.

10 “(4) REQUIREMENTS FOR EDUCATIONAL SERV-
11 ICE AGENCIES.—

12 “(A) IN GENERAL.—If an educational serv-
13 ice agency is required by State law to carry out
14 programs under this part, the joint responsibil-
15 ities given to local educational agencies under
16 this subsection shall—

17 “(i) not apply to the administration
18 and disbursement of any payments re-
19 ceived by that educational service agency;
20 and

21 “(ii) be carried out only by that edu-
22 cational service agency.

1 “(B) ADDITIONAL REQUIREMENT.—Not-
2 withstanding any other provision of this sub-
3 section, an educational service agency shall pro-
4 vide for the education of children with disabil-
5 ities in the least restrictive environment, as re-
6 quired by section 612(a)(4).

7 “(f) COORDINATED SERVICES SYSTEM.—

8 “(1) IN GENERAL.—A local educational agency
9 may not use more than 5 percent of the amount
10 such agency receives under this part for any fiscal
11 year, in combination with other amounts (which
12 shall include amounts other than education funds),
13 to develop and implement a coordinated services sys-
14 tem designed to improve results for children and
15 families, including children with disabilities and their
16 families.

17 “(2) ACTIVITIES.—In implementing a coordi-
18 nated services system under this subsection, a local
19 educational agency may carry out activities which in-
20 clude—

21 “(A) improving the effectiveness and effi-
22 ciency of service delivery, including developing
23 strategies that promote accountability for re-
24 sults;

1 “(B) service coordination and case man-
2 agement that facilitates the linkage of individ-
3 ualized education programs under this part and
4 individualized family service plans under part C
5 with individualized service plans under multiple
6 Federal and State programs, such as title I of
7 the Rehabilitation Act of 1973 (vocational reha-
8 bilitation), title XIX of the Social Security Act
9 (Medicaid), and title XVI of the Social Security
10 Act (supplemental security income);

11 “(C) developing and implementing inter-
12 agency financing strategies for the provision of
13 education, health, mental health, and social
14 services, including transition services and relat-
15 ed services under this title; and

16 “(D) interagency personnel development
17 for individuals working on coordinated services.

18 “(3) COORDINATION WITH CERTAIN PROJECTS
19 UNDER ELEMENTARY AND SECONDARY EDUCATION
20 ACT OF 1965.—If a local educational agency is carry-
21 ing out a coordinated services project under title XI
22 of the Elementary and Secondary Education Act of
23 1965 and a coordinated services project under this
24 part in the same schools, such agency shall use

1 amounts under this subsection in accordance with
2 the requirements of that title.

3 “(g) DIRECT SERVICES BY THE STATE EDU-
4 CATIONAL AGENCY.—

5 “(1) IN GENERAL.—A State educational agency
6 shall use the payments that would otherwise have
7 been available to a local educational agency or to a
8 State agency to provide special education and relat-
9 ed services directly to children with disabilities resid-
10 ing in the area served by that local agency, or for
11 whom that State agency is responsible, if the State
12 educational agency determines that the local edu-
13 cation agency or State agency, as the case may be—

14 “(A) has not provided the information
15 needed to establish the eligibility of such agency
16 under this section;

17 “(B) is unable to establish and maintain
18 programs of free appropriate public education
19 that meet the requirements of subsection (a);

20 “(C) is unable or unwilling to be consoli-
21 dated with one or more local educational agen-
22 cies in order to establish and maintain such
23 programs; or

24 “(D) has one or more children with disabil-
25 ities who can best be served by a regional or

1 State program or service delivery system de-
2 signed to meet the needs of such children.

3 “(2) MANNER AND LOCATION OF EDUCATION
4 AND SERVICES.—The State educational agency may
5 provide special education and related services under
6 paragraph (1) in such manner and at such locations
7 (including regional or State centers) as the State
8 agency considers appropriate. Such education and
9 services shall be provided in accordance with this
10 part.

11 “(h) STATE AGENCY ELIGIBILITY.—Any State agen-
12 cy that desires to receive a subgrant for any fiscal year
13 under section 611(c) shall demonstrate to the satisfaction
14 of the State educational agency that—

15 “(1) all children with disabilities who are par-
16 ticipating in programs and projects funded under
17 this part receive a free appropriate public education,
18 and that those children and their parents are pro-
19 vided all the rights and procedural safeguards de-
20 scribed in this part; and

21 “(2) the agency meets such other conditions of
22 this section as the Secretary determines to be appro-
23 priate.

1 **“SEC. 614. EVALUATIONS, REEVALUATIONS, INDIVIDUAL-**
2 **IZED EDUCATION PROGRAMS, AND EDU-**
3 **CATIONAL PLACEMENTS.**

4 “(a) EVALUATIONS AND REEVALUATIONS.—

5 “(1) INITIAL EVALUATIONS.—

6 “(A) IN GENERAL.—A State educational
7 agency, other State agency, or local educational
8 agency shall conduct an initial evaluation, in ac-
9 cordance with this paragraph and subsection
10 (b), before the initial provision of special edu-
11 cation and related services to a child with a dis-
12 ability under this part.

13 “(B) PROCEDURES.—Such initial evalua-
14 tion shall consist of procedures—

15 “(i) to determine whether a child is a
16 child with a disability (as defined in sec-
17 tion 602(3)); and

18 “(ii) to determine the educational
19 needs of such child.

20 “(C) PARENTAL CONSENT.—

21 “(i) IN GENERAL.—The agency pro-
22 posing to conduct an initial evaluation to
23 determine if the child qualifies as a child
24 with a disability as defined in section
25 602(3)(A) or 602(3)(B) shall obtain an in-
26 formed consent from the parent of such

1 child before the evaluation is conducted.
2 Parental consent for evaluation shall not
3 be construed as consent for placement for
4 receipt of special education and related
5 services.

6 “(ii) REFUSAL.—If the parents of
7 such child refuse consent for the evalua-
8 tion, the agency may continue to pursue an
9 evaluation by utilizing the mediation and
10 due process procedures under section
11 615(e).

12 “(2) REEVALUATIONS.—A local educational
13 agency shall ensure that a reevaluation of each child
14 with a disability is conducted—

15 “(A) if conditions warrant a reevaluation
16 or if the child’s parent or teacher requests a re-
17 evaluation, but at least once every 3 years; and

18 “(B) in accordance with subsections (b)
19 and (c).

20 “(b) EVALUATION PROCEDURES.—

21 “(1) NOTICE.—The local educational agency
22 shall provide notice to the parents of a child with a
23 disability, in accordance with subsections (b)(3),
24 (b)(4), and (c) of section 615, that describes any

1 evaluation procedures such agency proposes to
2 conduct.

3 “(2) CONDUCT OF EVALUATION.—In conduct-
4 ing the evaluation, the local educational agency
5 shall—

6 “(A) use a variety of assessment tools and
7 strategies to gather relevant functional and de-
8 velopmental information, including information
9 provided by the parent, that may assist in de-
10 termining whether the child is a child with a
11 disability and the content of the child’s individ-
12 ualized education program, including informa-
13 tion related to enabling the child to be involved
14 in and progress in the general curriculum or,
15 for preschool children, to participate in appro-
16 priate activities;

17 “(B) not use any single procedure as the
18 sole criterion for determining whether a child is
19 a child with a disability or determining an ap-
20 propriate educational program for the child;
21 and

22 “(C) use technically sound instruments
23 that may assess the relative contribution of cog-
24 nitive and behavioral factors, in addition to
25 physical or developmental factors.

1 “(3) ADDITIONAL REQUIREMENTS.—Each local
2 educational agency shall ensure that—

3 “(A) tests and other evaluation materials
4 used to assess a child under this section—

5 “(i) are selected and administered so
6 as not to be discriminatory on a racial or
7 cultural basis; and

8 “(ii) are provided and administered in
9 the child’s native language or other mode
10 of communication, unless it is clearly not
11 feasible to do so; and

12 “(B) any standardized tests that are given
13 to the child—

14 “(i) have been validated for the spe-
15 cific purpose for which they are used;

16 “(ii) are administered by qualified
17 personnel; and

18 “(iii) are administered in accordance
19 with any instructions provided by the pro-
20 ducer of such tests; and

21 “(C) the child is assessed in all areas of
22 suspected disability.

23 “(4) DETERMINATION OF ELIGIBILITY.—Upon
24 completion of administration of tests and other eval-
25 uation materials—

1 “(A) the determination of whether the
2 child is a child with a disability as defined in
3 section 602(3) or section 602(3)(B) will be
4 made by a team of qualified professionals and
5 the parent of the child in accordance with para-
6 graph (5); and

7 “(B) a copy of the evaluation report and
8 the documentation of determination of eligibility
9 will be given to the parent.

10 “(5) SPECIAL RULE FOR ELIGIBILITY DETER-
11 MINATION.—In making a determination of eligibility
12 under paragraph (4)(A), a child shall not be deter-
13 mined to be a child with a disability based on any
14 of the following:

15 “(A) Lack of instruction, including instruc-
16 tion in reading or math.

17 “(B) Limited English proficiency.

18 “(C) Cultural or environmental factors.

19 “(D) Economic disadvantage.

20 “(c) REEVALUATION PROCEDURES.—

21 “(1) IN GENERAL.—As part of any reevaluation
22 to assess a child under this section, the individual-
23 ized education program team and other qualified
24 professionals, as appropriate, shall—

“(A) review existing evaluation data on the child, including current classroom-based assessments and teacher and related services provider’s observation; and

“(B) on the basis of that review and input from the child’s parents, identify what additional data, if any, are needed to determine—

“(i) whether the child continues to have a disability, as described in section 602(3)(A)(i) or section 602(3)(B);

“(ii) the child’s present levels of performance and educational needs; and

“(iii)(I) whether the child continues to need special education and related services; and

“(II) if so, any additions or modifications to the special education and related services to enable the child to meet the objectives set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum.

“(2) TESTS AND OTHER EVALUATION MATERIALS.—The local educational agency shall administer such tests and other evaluation materials as

1 may be needed to produce the data identified by the
2 IEP Team under paragraph (1)(B).

3 “(3) REQUIREMENTS IF ADDITIONAL DATA NOT
4 NEEDED.—If the IEP Team and other qualified pro-
5 fessionals, as appropriate, determine that no addi-
6 tional data are needed to determine whether the
7 child continues to be a child with a disability, the
8 local educational agency—

9 “(A) shall notify the child’s parents of—

10 “(i) that determination and the rea-
11 sons for it; and

12 “(ii) the right of such parents to re-
13 quest an assessment to determine whether
14 the child continues to be a child with a dis-
15 ability; and

16 “(B) shall not be required to conduct such
17 an assessment unless requested to by the child’s
18 parents.

19 “(d) INDIVIDUALIZED EDUCATION PROGRAMS.—

20 “(1) REQUIREMENT THAT PROGRAM BE IN EF-
21 FECT.—

22 “(A) IN GENERAL.—At the beginning of
23 each school year, each local educational agency,
24 or State educational agency, as the case may
25 be, shall have in effect, for each child with a

1 disability in its jurisdiction, an individualized
2 education program, as defined in section
3 602(11).

4 “(B) PROGRAM FOR CHILD AGED 3 TO 5.—

5 In the case of a child with a disability aged 3
6 to 5, inclusive, an individualized family service
7 plan that contains the material described in sec-
8 tion 636, and that is developed in accordance
9 with this section, may serve as the IEP of the
10 child if using that plan as the IEP is—

11 “(i) consistent with State policy; and

12 “(ii) agreed to by the agency and the
13 child’s parents.

14 “(2) DEVELOPMENT OF IEP.—

15 “(A) IN GENERAL.—An individualized edu-
16 cation program team shall develop the IEP de-
17 scribed in paragraph (1). In developing such
18 IEP, the IEP Team, subject to subparagraph
19 (B), shall—

20 “(i) consider the child’s strengths and
21 the parents’ concerns for enhancing their
22 child’s education;

23 “(ii) consider the results of the initial
24 evaluation or most recent reevaluation;

1 “(iii) in the case of a child whose be-
2 havior impedes his or her learning or that
3 of others, consider, when appropriate,
4 strategies, including positive behavior man-
5 agement interventions and strategies to
6 help the child behave in an appropriate
7 and responsible manner conducive to learn-
8 ing;

9 “(iv) in the case of a child with lim-
10 ited English proficiency, consider the lan-
11 guage needs of the child as such needs re-
12 late to the child’s IEP;

13 “(v) in the case of a child who is blind
14 or visually impaired, provide for instruction
15 in braille and the use of braille unless all
16 members of the IEP Team concur that,
17 after an evaluation of the child’s reading
18 and writing skills, needs, and appropriate
19 reading and writing media (including an
20 evaluation of the child’s future needs for
21 instruction in braille or the use of braille),
22 instruction in braille or the use of braille
23 is not appropriate for the child;

24 “(vi) consider the communication
25 needs of the child, and in the case of a

1 child who is deaf, hard-of-hearing, blind, or
2 communicatively disabled, consider the lan-
3 guage and communication needs of the
4 child; and

5 “(vii) consider whether the child re-
6 quires assistive technology services or de-
7 vices.

8 “(B) REQUIREMENT WITH RESPECT TO
9 REGULAR EDUCATION TEACHER.—The regular
10 education teacher of the child, as a member of
11 the IEP Team, shall, to the extent appropriate,
12 participate in the development of the IEP of
13 the child, including the determination of appro-
14 priate positive behavior-management interven-
15 tions and strategies consistent with subpara-
16 graph (A)(iii) of this paragraph, and the deter-
17 mination of supplementary aids and services,
18 program modifications, and support for school
19 personnel consistent with section 602(11)(E).

20 “(3) REVIEW AND REVISION OF IEP.—

21 “(A) IN GENERAL.—The local educational
22 agency shall ensure that, subject to subpara-
23 graph (C), the IEP Team—

1 “(i) reviews each IEP at least once a
2 year to determine whether the annual goals
3 for the child are being achieved; and

4 “(ii) revises the IEP to address—

5 “(I) any lack of expected
6 progress toward the annual goals and
7 in the general curriculum, where ap-
8 propriate;

9 “(II) the results of any reevalua-
10 tion conducted under this section;

11 “(III) information about the
12 child provided to, or by, the parents,
13 as described in section 602(11)(F)(ii);
14 or

15 “(IV) the child’s anticipated
16 needs as otherwise appropriate.

17 “(B) CERTAIN CHILDREN WITH DISABIL-
18 ITIES.—

19 “(i) IN GENERAL.—In the case of a
20 child with a disability who has dem-
21 onstrated a pattern of behavior that sig-
22 nificantly impairs the education of the
23 child, or the education of the classmates of
24 the child, and the ability of the teacher of
25 the child to teach, if such teacher initiates

1 or requests an IEP meeting, then the ap-
2 propriate authority shall convene an IEP
3 meeting to review the child's educational
4 program, related services, supplementary
5 aids and services, and placement.

6 “(ii) REVIEW OF IEP.—In carrying
7 out a review of the IEP of the child, the
8 IEP Team shall determine—

9 “(I) the appropriateness of the
10 current IEP of the child;

11 “(II) whether or not special edu-
12 cation and related services have been
13 appropriately provided to the child;

14 “(III) whether or not other sup-
15plementary aids or services, including
16 teacher training, are needed to ad-
17dress the behavior of the child; and

18 “(IV) subject to clauses (iii) and
19 (iv), whether or not the placement of
20 the child should be changed.

21 “(iii) DETERMINATION OF CHANGE IN
22 PLACEMENT.—Prior to proposing a change
23 in the placement of the child, the IEP
24 Team shall first consider and then docu-
25ment the following:

1 “(I) The cumulative record over
2 a reasonable period of time describing
3 the frequent behaviors exhibited by
4 the child that significantly impairs the
5 education of the child, the education
6 of the classmates of the child, and the
7 ability of the teacher of the child to
8 teach.

9 “(II) Documentation of the ef-
10 forts made to address the behavior of
11 the child, the use of supplementary
12 services or strategies (including the
13 use of behavior management plans)
14 that have been implemented over a
15 reasonable period of time and have
16 failed to address the behavior of the
17 child in a manner that would enable
18 the child to remain in the current
19 educational placement of the child
20 without significantly impairing the
21 education of the child, the education
22 of the classmates of the child, and the
23 ability of the teacher of the child to
24 teach.

1 “(III) The training made avail-
2 able to the teacher or teachers of the
3 child.

4 “(iv) EXPEDITED DUE PROCESS
5 HEARING.—If the IEP Team determines
6 that a change in placement of the child is
7 appropriate, and the parents of the child
8 disagree with such determination, then ei-
9 ther party may request an expedited due
10 process hearing in accordance with section
11 615(f)(2).

12 “(C) REQUIREMENT WITH RESPECT TO
13 REGULAR EDUCATION TEACHER.—The regular
14 education teacher of the child, as a member of
15 the IEP Team, shall, to the extent appropriate,
16 participate in the review and revision of the
17 IEP of the child.

18 “(4) FAILURE TO MEET TRANSITION OBJEC-
19 TIVES.—If a participating agency, other than the
20 local educational agency, fails to provide the transi-
21 tion services described in the IEP in accordance with
22 section 602(11)(F)(ii), the local educational agency
23 shall reconvene the IEP Team to identify alternative
24 strategies to meet the transition objectives for the
25 child set out in that program.

1 “(5) RULE OF CONSTRUCTION.—Nothing in
2 this subsection shall be construed—

3 “(A) to decrease the amount of informa-
4 tion that a parent receives concerning the
5 progress of the child of such parent; or

6 “(B) to increase the amount of paperwork
7 for the teachers, related services personnel, and
8 administrators of such child.

9 “(e) EDUCATIONAL PLACEMENTS.—Each local edu-
10 cational agency or State educational agency shall ensure
11 that the parents of each child with a disability are mem-
12 bers of any group that makes decisions on the educational
13 placement of their child.

14 **“SEC. 615. PROCEDURAL SAFEGUARDS.**

15 “(a) ESTABLISHMENT OF PROCEDURES.—Any State
16 educational agency or local educational agency that re-
17 ceives assistance under this part shall establish and main-
18 tain procedures in accordance with this section to assure
19 that children with disabilities and their parents are guar-
20 anteed procedural safeguards with respect to the provision
21 of free appropriate public education by such agencies.

22 “(b) TYPES OF PROCEDURES.—The procedures re-
23 quired by this section shall include—

24 “(1) an opportunity for the parents of a child
25 with a disability to examine all records relating to

1 such child and to participate in meetings with re-
2 spect to the identification, evaluation, and edu-
3 cational placement of the child, and the provision of
4 a free appropriate public education to such child,
5 and to obtain an independent educational evaluation
6 of the child;

7 “(2) procedures to protect the rights of the
8 child whenever the parents of the child are not
9 known, the agency cannot, after reasonable efforts,
10 locate the parents, or the child is a ward of the
11 State, including the assignment of an individual
12 (who shall not be an employee of the State edu-
13 cational agency, the local educational agency, or any
14 other agency that is involved in the education or
15 care of the child) to act as a surrogate for the par-
16 ents;

17 “(3) written prior notice to the parents of the
18 child whenever such agency—

19 “(A) proposes to initiate or change; or

20 “(B) refuses to initiate or change;

21 the identification, evaluation, or educational place-
22 ment of the child, in accordance with subsection (c),
23 or the provision of a free appropriate public edu-
24 cation to the child;

1 “(4) procedures designed to assure that the no-
2 tice required by paragraph (3) is in the native lan-
3 guage of the parents, unless it clearly is not feasible
4 to do so;

5 “(5) an opportunity for mediation in accordance
6 with subsection (e);

7 “(6) an opportunity to present complaints with
8 respect to any matter relating to the identification,
9 evaluation, or educational placement of the child, or
10 the provision of a free appropriate public education
11 to such child;

12 “(7) procedures that require the parent of a
13 child with a disability, or the attorney representing
14 the child, to provide notice (which shall remain con-
15 fidential)—

16 “(A) to the State educational agency or
17 local educational agency, as the case may be, in
18 the complaint filed under paragraph (6); and

19 “(B) that shall include—

20 “(i) the name of the child, the address
21 of the residence of the child, and the name
22 of the school at which the child is attend-
23 ing;

1 “(ii) a description of the nature of the
2 problem of the child relating to such pro-
3 posed initiation or change, including facts
4 relating to such problem; and

5 “(iii) the proposed resolution of the
6 problem; and

7 “(8) procedures that require the State edu-
8 cational agency to develop a model form to assist
9 parents in filing a complaint in accordance with
10 paragraph (7).

11 “(c) CONTENT OF PRIOR WRITTEN NOTICE.—The
12 notice required by subsection (b)(3) shall include—

13 “(1) a description of the action proposed or re-
14 fused by the agency;

15 “(2) an explanation of why the agency proposes
16 or refuses to take the action;

17 “(3) a description of any other options that the
18 agency considered and the reasons why those options
19 were rejected;

20 “(4) a description of each evaluation procedure,
21 test, record, or report the agency used as a basis for
22 the proposed or refused action;

23 “(5) a description of any other factors that are
24 relevant to the agency’s proposal or refusal; and

1 “(6) a statement that the parents of a child
2 with a disability have protection under the proce-
3 dural safeguards of this title and, if this notice is
4 not an initial referral for evaluation, the means by
5 which a copy of a description of the procedural safe-
6 guards can be obtained.

7 “(d) PROCEDURAL SAFEGUARDS NOTICE.—

8 “(1) IN GENERAL.—A copy of the procedural
9 safeguards available to the parents of a child with
10 a disability shall be given to the parents, at a mini-
11 mum—

12 “(A) upon initial referral for evaluation;

13 “(B) upon each notification of an individ-
14 ualized education program meeting and upon
15 reevaluation of the child; and

16 “(C) upon registration of a complaint
17 under subsection (b)(6).

18 “(2) CONTENTS.—The procedural safeguards
19 notice shall include a full explanation of the proce-
20 dural safeguards written in the native language of
21 the parents, unless not feasible to do so, and written
22 in an easily understandable manner, available under
23 this section and under regulations promulgated by
24 the Secretary relating to—

25 “(A) independent educational evaluation;

1 “(B) prior written notice;

2 “(C) parental consent;

3 “(D) access to educational records;

4 “(E) opportunity to present complaints;

5 “(F) the child’s placement during pend-
6 ency of due process proceedings;

7 “(G) procedures for students who are sub-
8 ject to placement in an interim alternative edu-
9 cational setting;

10 “(H) requirements for unilateral placement
11 by parents of children in private schools at pub-
12 lic expense;

13 “(I) mediation;

14 “(J) due process hearings, including re-
15 quirements for disclosure of evaluation results
16 and recommendations;

17 “(K) State-level appeals (if applicable in
18 that State);

19 “(L) civil actions; and

20 “(M) attorney’s fees.

21 “(e) MEDIATION.—

22 “(1) IN GENERAL.—Any State educational
23 agency or local educational agency that receives as-
24 sistance under this part shall ensure that procedures
25 are established and implemented to allow parties to

1 disputes involving the provision of free appropriate
2 public education to children with disabilities by any
3 such State educational agency or local educational
4 agency to resolve such disputes through a mediation
5 process.

6 “(2) REQUIREMENTS.—Such procedures shall
7 meet the following requirements:

8 “(A) The procedures shall ensure that the
9 mediation process—

10 “(i) is voluntary on the part of the
11 parents and may be terminated by either
12 party after a good faith effort has been
13 made by the party terminating the medi-
14 ation process; and

15 “(ii) is conducted by a qualified and
16 impartial mediator who is trained in effec-
17 tive mediation techniques.

18 “(B) The State shall maintain a list of in-
19 dividuals who are qualified mediators and
20 knowledgeable in laws and regulations relating
21 to the provision of special education and related
22 services.

23 “(C) The State shall bear the cost of the
24 mediation process.

1 “(D) Each session in the mediation process
2 shall be scheduled in a timely manner and shall
3 be held in a location that is convenient to the
4 parties to the dispute.

5 “(E) An agreement reached by the parties
6 to the dispute in the mediation process shall be
7 set forth in a written mediation agreement.

8 “(F) Discussions that occur during the
9 mediation process shall be confidential and may
10 not be used as evidence in any subsequent due
11 process hearings or civil proceedings, and the
12 parties to the mediation process may be re-
13 quired to sign a confidentiality pledge prior to
14 the commencement of such process.

15 “(G) The State shall determine whether or
16 not attorneys may attend or otherwise partici-
17 pate in the mediation process after offering the
18 opportunity for parents and representatives of
19 school districts to participate in the mediation
20 process prior to any due process filing without
21 attorneys present.

22 “(f) IMPARTIAL DUE PROCESS HEARING.—

1 “(1) IN GENERAL.—Whenever a complaint has
2 been received under section 614(d)(3)(B), or sub-
3 section (b)(6) or (k) of this section, the parents in-
4 volved in such complaint shall have an opportunity
5 for an impartial due process hearing which shall be
6 conducted by the State educational agency or by the
7 local educational agency, as determined by State law
8 or by the State educational agency.

9 “(2) DISCLOSURE OF EVALUATIONS AND REC-
10 COMMENDATIONS.—

11 “(A) IN GENERAL.—At least 10 school
12 days prior to a hearing conducted pursuant to
13 paragraph (1), each party shall disclose to all
14 other parties all evaluations and recommenda-
15 tions based on the offering party’s evaluations
16 which the party intends to use at the hearing.

17 “(B) PROHIBITION.—Any party which fails
18 to meet the requirement of subparagraph (A)
19 shall be barred from introducing such evalua-
20 tions and recommendations at such hearing.

21 “(3) LIMITATION ON CONDUCT OF HEARING.—
22 A hearing conducted pursuant to paragraph (1) may
23 not be conducted by an employee of the State edu-
24 cational agency or the local educational agency in-
25 volved in the education or care of the child.

1 “(4) ADDITIONAL REQUIREMENTS WITH RE-
2 SPECT TO HEARINGS FOR CERTAIN CHILDREN WITH
3 DISABILITIES.—A hearing conducted pursuant to
4 paragraph (1) that is based upon a complaint re-
5 ceived under section 614(d)(3)(B) shall, in addition
6 to the requirements contained in this subsection,
7 comply with the following additional requirements:

8 “(A) In determining whether or not the de-
9 cision by the IEP Team to change the place-
10 ment of the child is justified and appropriate,
11 the hearing officer shall, at a minimum, review
12 the information under clause (iii) of such
13 section.

14 “(B) The child shall remain in the current
15 educational placement of the child until the
16 hearing officer reaches a final decision under
17 this subsection.

18 “(C) The hearing officer shall make a de-
19 termination of findings and reach a final deci-
20 sion not later than 20 days after the first day
21 of the hearing, or, at the discretion of the hear-
22 ing officer, not later than 30 days after such
23 first day of the hearing.

1 “(D) The placement of the child, including
2 the placement of the child during any due proc-
3 ess or judicial proceeding, shall be determined
4 in accordance with the final decision of the
5 hearing officer under this subsection, unless the
6 parents and the State or local educational agen-
7 cy agree otherwise.

8 “(g) APPEAL.—If the hearing required by subsection
9 (f) is conducted by a local educational agency, any party
10 aggrieved by the findings and decision rendered in such
11 a hearing may appeal such findings and decision to the
12 State educational agency. Such agency shall conduct an
13 impartial review of such decision. The officer conducting
14 such review shall make an independent decision upon com-
15 pletion of such review.

16 “(h) SAFEGUARDS.—Any party to a hearing con-
17 ducted pursuant to subsection (f), or an appeal conducted
18 pursuant to subsection (g), shall be accorded—

19 “(1) the right to be accompanied and advised
20 by counsel and by individuals with special knowledge
21 or training with respect to the problems of children
22 with disabilities;

23 “(2) the right to present evidence and confront,
24 cross-examine, and compel the attendance of wit-
25 nesses;

1 “(3) the right to a written, or, at the option of
2 the parents, electronic verbatim record of such hear-
3 ing; and

4 “(4) the right to written, or, at the option of
5 the parents, electronic findings of fact and decisions
6 (which findings and decisions shall be made available
7 to the public consistent with the requirements of sec-
8 tion 617(c) (relating to the confidentiality of data,
9 information, and records) and shall also be transmit-
10 ted to the advisory panel established pursuant to
11 section 612(a)(18)).

12 “(i) ADMINISTRATIVE PROCEDURES.—

13 “(1) IN GENERAL.—A decision made in a hear-
14 ing conducted pursuant to subsection (f) shall be
15 final, except that any party involved in such hearing
16 may appeal such decision under the provisions of
17 subsection (g) and paragraph (2) of this subsection.

18 “(2) RIGHT TO BRING CIVIL ACTION.—

19 “(A) IN GENERAL.—Any party aggrieved
20 by the findings and decision made under sub-
21 section (f) who does not have the right to an
22 appeal under subsection (g), and any party ag-
23 grieved by the findings and decision under this
24 subsection, shall have the right to bring a civil
25 action with respect to the complaint presented

1 pursuant to this section, which action may be
2 brought in any State court of competent juris-
3 diction or in a district court of the United
4 States without regard to the amount in con-
5 troversy.

6 “(B) ADDITIONAL REQUIREMENTS.—In
7 any action brought under this paragraph the
8 court—

9 “(i) shall receive the records of the
10 administrative proceedings;

11 “(ii) shall hear additional evidence at
12 the request of a party; and

13 “(iii) basing its decision on the pre-
14 ponderance of the evidence, shall grant
15 such relief as the court determines is ap-
16 propriate.

17 “(3) JURISDICTION OF DISTRICT COURTS; AT-
18 TORNEYS’ FEES.—

19 “(A) IN GENERAL.—The district courts of
20 the United States shall have jurisdiction of ac-
21 tions brought under this section without regard
22 to the amount in controversy.

23 “(B) AWARD OF ATTORNEYS’ FEES.—In
24 any action or proceeding brought under this
25 section, the court, in its discretion, may award

1 reasonable attorneys' fees as part of the costs
2 to the parents of a child or youth with a disabili-
3 ty who is the prevailing party.

4 “(C) DETERMINATION OF AMOUNT OF AT-
5 TORNEYS' FEES.—Fees awarded under this
6 paragraph shall be based on rates prevailing in
7 the community in which the action or proceed-
8 ing arose for the kind and quality of services
9 furnished. No bonus or multiplier may be used
10 in calculating the fees awarded under this sub-
11 section.

12 “(D) PROHIBITION OF ATTORNEYS' FEES
13 AND RELATED COSTS FOR CERTAIN SERV-
14 ICES.—(i) Attorneys' fees may not be awarded
15 and related costs may not be reimbursed in any
16 action or proceeding under this subsection for
17 services performed subsequent to the time of a
18 written offer of settlement to a parent if—

19 “(I) the offer is made within the time
20 prescribed by Rule 68 of the Federal Rules
21 of Civil Procedure or, in the case of an ad-
22 ministrative proceeding, at any time more
23 than ten days before the proceeding begins;

24 “(II) the offer is not accepted within
25 10 days; and

1 “(III) the court or administrative
2 hearing officer finds that the relief finally
3 obtained by the parents is not more favor-
4 able to the parents than the offer of settle-
5 ment.

6 “(ii) Attorneys’ fees may not be awarded
7 relating to any meeting of the IEP Team unless
8 such meeting is convened as a result of a judi-
9 cial action or proceeding.

10 “(E) EXCEPTION TO PROHIBITION ON AT-
11 TORNEYS’ FEES AND RELATED COSTS.—Not-
12 withstanding subparagraph (D), an award of
13 attorneys’ fees and related costs may be made
14 to a parent who is the prevailing party and who
15 was substantially justified in rejecting the set-
16 tlement offer.

17 “(F) REDUCTION IN AMOUNT OF ATTOR-
18 NEYS’ FEES.—Except as provided in subpara-
19 graph (G), whenever the court finds that—

20 “(i) the parent, during the course of
21 the action or proceeding, unreasonably pro-
22 tracted the final resolution of the con-
23 troversy;

1 “(ii) the amount of the attorneys’ fees
2 otherwise authorized to be awarded unrea-
3 sonably exceeds the hourly rate prevailing
4 in the community for similar services by
5 attorneys of reasonably comparable skill
6 and experience;

7 “(iii) the time spent and legal services
8 furnished were excessive considering the
9 nature of the action or proceeding;

10 “(iv) the attorney representing the
11 parent did not provide to the school dis-
12 trict the appropriate information in the
13 due process complaint in accordance with
14 subsection (b)(7); or

15 “(v) the amount of attorneys’ fees re-
16 quested is not consistent with the extent of
17 the success of the parents;

18 the court shall reduce, accordingly, the amount
19 of the attorneys’ fees awarded under this sub-
20 section.

21 “(G) EXCEPTION TO REDUCTION IN
22 AMOUNT OF ATTORNEYS’ FEES.—The provi-
23 sions of subparagraph (F) shall not apply in
24 any action or proceeding if the court finds that

1 the State or local educational agency unreason-
2 ably protracted the final resolution of the action
3 or proceeding or there was a violation of this
4 section.

5 “(j) MAINTENANCE OF CURRENT EDUCATIONAL
6 PLACEMENT.—Except as provided in subsection (k), dur-
7 ing the pendency of any proceedings conducted pursuant
8 to this section, unless the State or local educational agency
9 and the parents otherwise agree, the child shall remain
10 in the then current educational placement of such child,
11 or, if applying for initial admission to a public school,
12 shall, with the consent of the parents, be placed in the
13 public school program until all such proceedings have been
14 completed.

15 “(k) PLACEMENT IN ALTERNATIVE EDUCATIONAL
16 SETTING.—

17 “(1) AUTHORITY OF SCHOOL PERSONNEL.—
18 School personnel under this section may, to the
19 same extent as a court, order a change in the place-
20 ment of a child with a disability—

21 “(A) to an appropriate interim alternative
22 educational setting, another setting, or suspen-
23 sion, for not more than 10 school days (to the
24 extent such alternatives would be applied to
25 children without disabilities); and

1 “(B) to an appropriate interim alternative
2 educational setting for the same amount of time
3 that a child without a disability would be sub-
4 ject to discipline, but for not more than an ad-
5 ditional 45 school days if—

6 “(i) the child carries a weapon to
7 school or to a school function under the ju-
8 risdiction of a State or a local educational
9 agency;

10 “(ii) the child possesses or uses illegal
11 drugs or sells or solicits the sale of medica-
12 tions or illegal drugs while at school or a
13 school function under the jurisdiction of a
14 State or local educational agency; or

15 “(iii) the child causes serious injury
16 while at school or at a school function
17 under the jurisdiction of a State or a local
18 educational agency.

19 “(2) AUTHORITY OF HEARING OFFICER.—A
20 hearing officer under this section may, to the same
21 extent as a court, order a change in the placement
22 of a child with a disability to an appropriate interim
23 alternative educational setting for not more than 45
24 school days if—

1 “(A) the maintenance of the current place-
2 ment of such child is substantially likely to re-
3 sult in injury to the child or to others; and

4 “(B) the hearing officer—

5 “(i) determines that the public agency
6 has demonstrated by substantial evidence
7 that the requirement of subparagraph (A)
8 has been met;

9 “(ii) considers the appropriateness of
10 the child’s current placement; and

11 “(iii) considers whether the public
12 agency has made reasonable efforts to min-
13 imize the risk of harm including the use of
14 supplementary aids and services.

15 “(3) DETERMINATION OF SETTING.—The alter-
16 native educational setting described in paragraph (1)
17 or paragraph (2) shall be determined by the individ-
18 ualized education program team.

19 “(4) MANIFESTATION DETERMINATION RE-
20 VIEW.—

21 “(A) IN GENERAL.—If a change in place-
22 ment or disciplinary proceeding, including ex-
23 pulsion, is contemplated as a result of an action
24 described in paragraph (1) or paragraph (2)—

1 “(i) not later than 3 school days after
2 the date on which such action has been
3 taken the parents shall be notified of such
4 action; and

5 “(ii) not later than 15 school days
6 after the date on which such action has
7 been taken a review shall be conducted of
8 the relationship between the child’s disabil-
9 ity and the behavior described in para-
10 graph (1).

11 “(B) INDIVIDUALS TO CARRY OUT RE-
12 VIEW.—A review described in subparagraph (A)
13 shall be conducted by the IEP Team and other
14 qualified personnel.

15 “(C) CONDUCT OF REVIEW.—

16 “(i) IN GENERAL.—In carrying out a
17 review described in subparagraph (A), the
18 individuals described in subparagraph (B)
19 shall consider appropriate factors, includ-
20 ing—

21 “(I) the appropriateness of the
22 child’s placement;

23 “(II) the consistency of the im-
24 plementation of the child’s entire IEP,

1 including the technical soundness of
2 the behavior strategies used;

3 “(III) evaluation and diagnostic
4 results, which may include any such
5 results supplied by the parents or
6 guardian of the child; and

7 “(IV) observations of the child.

8 “(ii) ADDITIONAL REQUIREMENTS.—

9 The IEP Team may determine that the be-
10 havior of the child was not a manifestation
11 of such child’s disability only if the IEP
12 Team first determines that the disability—

13 “(I) did not impair the ability of
14 the child to understand the impact
15 and consequences of the behavior; and

16 “(II) did not impair the ability of
17 the child to control the behavior.

18 “(5) DETERMINATION THAT BEHAVIOR WAS
19 MANIFESTATION OF DISABILITY.—If the result of
20 the review described in paragraph (4) is a deter-
21 mination that the behavior of the child with a dis-
22 ability was a manifestation of such child’s disability
23 and the parents of such child agree with such deter-
24 mination, the educational placement of such child
25 may be changed. If the parents do not agree with

1 such determination or with such changed educational
2 placement, an immediate appeal may be made to a
3 hearing officer to determine whether the child's
4 placement should be changed. Any party aggrieved
5 by the determination of the hearing officer may initi-
6 ate a due process hearing as described in subsection
7 (f).

8 “(6) DETERMINATION THAT BEHAVIOR WAS
9 NOT MANIFESTATION OF DISABILITY.—

10 “(A) IN GENERAL.—If the result of the re-
11 view described in paragraph (4) is a determina-
12 tion that the behavior of the child with a dis-
13 ability was not a manifestation of such child's
14 disability, the relevant disciplinary procedures
15 applicable to children without disabilities may
16 be applied in the same manner in which they
17 would be applied to children without disabilities.
18 If the parents do not agree with such applica-
19 tion, a due process hearing, as described in sub-
20 section (f), may be initiated. Any determination
21 under paragraph (4) that a child's behavior was
22 not a manifestation of a disability shall be re-
23 viewed by a hearing officer under subsection (f),
24 whether or not the child's parents request a
25 hearing, before educational services to the child

1 may be terminated under this paragraph. Dur-
2 ing the pendency of such due process proce-
3 dures, the child shall continue to receive edu-
4 cational services in the alternative educational
5 setting.

6 “(B) SPECIAL RULE.—Where application
7 of the relevant disciplinary procedures in sub-
8 paragraph (A) would result in the expulsion of
9 the child without the receipt of educational
10 services, the child may be expelled only if—

11 “(i) the child carries a weapon to
12 school or to a school function under the ju-
13 risdiction of a State or local educational
14 agency; or

15 “(ii) the child possesses or uses illegal
16 drugs or sells or solicits the sale of medica-
17 tions or illegal drugs while at school or a
18 school function under the jurisdiction of a
19 State or local educational agency.

20 “(7) EXPEDITED HEARING.—The State or local
21 educational agency shall arrange for an expedited
22 hearing in any case described in this subsection
23 when requested by the parent.

24 “(8) ADDITIONAL REQUIREMENTS.—

1 “(A) MAINTENANCE OF ALTERNATIVE
2 EDUCATIONAL SETTING.—If the parent of a
3 child described in this section requests a hear-
4 ing pursuant to subsection (f), the child shall
5 remain in the alternative educational setting in
6 which such child was placed during the pend-
7 ency of any proceedings under this subsection,
8 unless the parents and the State or local edu-
9 cational agency agree otherwise.

10 “(B) PROTECTIONS FOR CHILDREN NOT
11 YET ELIGIBLE FOR SPECIAL EDUCATION AND
12 RELATED SERVICES.—

13 “(i) IN GENERAL.—A child who has
14 not been determined to be eligible for spe-
15 cial education and related services under
16 this part and who has engaged in behavior
17 that violated any rule or code of conduct of
18 the local educational agency, including any
19 behavior described in paragraph (1), may
20 assert any of the protections provided for
21 in this part if the local educational agency
22 had knowledge (as determined in accord-
23 ance with this subparagraph) that the
24 child was a child with a disability before

1 the behavior that precipitated the discipli-
2 nary action occurred.

3 “(ii) BASIS OF KNOWLEDGE.—A local
4 educational agency shall be deemed to have
5 knowledge that a child is a child with a
6 disability if—

7 “(I) the parent of the child has
8 expressed concern in writing (unless
9 the parent is illiterate or has a dis-
10 ability that prevents compliance with
11 the requirements contained in this
12 subclause) to personnel of the appro-
13 priate educational agency that the
14 child is in need of special education
15 and related services;

16 “(II) the behavior of the child
17 demonstrates the need for such serv-
18 ices;

19 “(III) the parent of the child has
20 requested an evaluation of the child
21 pursuant to section 614; or

22 “(IV) the teacher of the child, or
23 other personnel of the local edu-
24 cational agency, has expressed con-
25 cern about the behavior of the child to

1 the director of special education of
2 such agency or to other personnel of
3 the agency.

4 “(iii) CONDITIONS THAT APPLY IF NO
5 BASIS OF KNOWLEDGE.—

6 “(I) IN GENERAL.—If a local
7 educational agency does not have
8 knowledge that a child is a child with
9 a disability (in accordance with clause
10 (ii)) prior to taking disciplinary meas-
11 ures against the child, the child may
12 be subjected to the same disciplinary
13 measures as measures applied to chil-
14 dren without disabilities, who engaged
15 in comparable behaviors consistent
16 with paragraph (2).

17 “(II) LIMITATIONS.—If a request
18 is made for an evaluation of a child
19 during the time period in which the
20 child is subjected to disciplinary meas-
21 ures under paragraph (1), the evalua-
22 tion shall be conducted in an exped-
23 ited manner. If the child is deter-
24 mined to be a child with a disability,
25 taking into consideration information

1 from the evaluation conducted by the
2 agency and information provided by
3 the parents, the agency shall provide
4 special education and related services
5 in accordance with the provisions of
6 this part, except that, pending the re-
7 sults of the evaluation, the child shall
8 remain in the educational placement
9 determined by school authorities.

10 “(C) REFERRAL TO AND ACTION BY LAW
11 ENFORCEMENT AND JUDICIAL AUTHORITIES.—

12 Nothing in this part shall be construed to pro-
13 hibit an agency from reporting a crime commit-
14 ted by a child with a disability to appropriate
15 authorities or to prevent State law enforcement
16 and judicial authorities from exercising their re-
17 sponsibilities with regard to the application of
18 Federal and State law to crimes committed by
19 a child with a disability.

20 “(9) DEFINITIONS.—For purposes of this sub-
21 section, the following definitions apply:

22 “(A) ILLEGAL DRUG.—The term ‘illegal
23 drug’—

24 “(i) means a controlled substance
25 within the meaning of any of paragraphs

1 (1) through (5) of section 202 of the Con-
2 trolled Substances Act (21 U.S.C 812); but

3 “(ii) does not include a controlled sub-
4 stance within the meaning of paragraphs
5 (1) through (5) of section 202 of such Act
6 if—

7 “(I) such controlled substance is
8 legally possessed or used under the
9 supervision of a licensed health care
10 professional; or

11 “(II) such controlled substance is
12 legally possessed or used under any
13 other authority under such Act or
14 under any other provision of Federal
15 law.

16 “(B) SERIOUS INJURY.—The term ‘serious
17 injury’ means an injury that involves substan-
18 tial risk of death, extreme physical pain, obvi-
19 ous or protracted disfigurement, loss of the use
20 of bodily members or organs, broken bones, or
21 significant endangerment to an individual’s
22 emotional health or safety that is the result of
23 a physical or verbal assault.

24 “(C) WEAPON.—The term ‘weapon’ has
25 the meaning given the term ‘dangerous weapon’

1 under paragraph (2) of the first subsection (g)
2 of section 930 of title 18, United States Code.

3 “(l) RULE OF CONSTRUCTION.—Nothing in this part
4 shall be construed to restrict or limit the rights, proce-
5 dures, and remedies available under the Constitution, the
6 Americans with Disabilities Act, title V of the Rehabilita-
7 tion Act of 1973, or other Federal laws protecting the
8 rights of children with disabilities, except that before the
9 filing of a civil action under such laws seeking relief that
10 is also available under this part, the procedures under sub-
11 sections (f) and (g) shall be exhausted to the same extent
12 as would be required had the action been brought under
13 this part.

14 “(m) TRANSFER OF PARENTAL RIGHTS AT AGE OF
15 MAJORITY.—

16 “(1) IN GENERAL.—A State that receives
17 amounts from a grant under this part may provide
18 that, when a child with a disability reaches the age
19 of majority under State law (except for a child with
20 a disability who has been determined to be incom-
21 petent under State law)—

22 “(A) the public agency shall provide any
23 notice required by this section to both the indi-
24 vidual and the parents;

1 “(B) all other rights accorded to parents
2 under this part transfer to the child;

3 “(C) the agency shall notify the individual
4 and the parents of the transfer of rights; and

5 “(D) all rights accorded to parents under
6 this part transfer to children who are incarcerated
7 in an adult or juvenile Federal, State, or
8 local correctional institution.

9 “(2) SPECIAL RULE.—If, under State law, a
10 child with a disability who has reached the age of
11 majority under State law is determined not to have
12 the ability to provide informed consent with respect
13 to the educational program of the child, the State
14 shall establish procedures for appointing the parent
15 of the child, or another appropriate individual, to
16 represent the educational interests of the child
17 throughout the period of eligibility of the child under
18 this part.

19 **“SEC. 616. WITHHOLDING AND JUDICIAL REVIEW.**

20 “(a) WITHHOLDING OF PAYMENTS.—

21 “(1) IN GENERAL.—Whenever the Secretary,
22 after reasonable notice and opportunity for hearing
23 to the State educational agency involved (and to any
24 local educational agency or State agency affected by
25 any failure described in subparagraph (B)), finds—

1 “(A) that there has been a failure by the
2 State to comply substantially with any provision
3 of this part; or

4 “(B) that there is a failure to comply with
5 any condition of a local educational agency’s or
6 State agency’s eligibility under this part;
7 the Secretary shall, after notifying the State edu-
8 cational agency, withhold any further payments to
9 the State under this part.

10 “(2) NATURE OF WITHHOLDING.—If the Sec-
11 retary withholds further payments under paragraph
12 (1), the Secretary may determine that such with-
13 holding will be limited to programs or projects, or
14 portions thereof, affected by the failure, or that the
15 State educational agency shall not make further pay-
16 ments under this part to specified local educational
17 agencies or State agencies affected by the failure.
18 Until the Secretary is satisfied that there is no
19 longer any failure to comply with the provisions of
20 this part, as specified in subparagraph (A) or (B) of
21 paragraph (1), no further payments shall be made to
22 the State under this part, or payments by the State
23 educational agency under this part shall be limited
24 to local educational agencies and State agencies
25 whose actions did not cause or were not involved in

1 the failure, as the case may be. Any State edu-
2 cational agency, State agency, or local educational
3 agency that has received notice under paragraph (1)
4 shall, by means of a public notice, take such meas-
5 ures as may be necessary to bring the pendency of
6 an action pursuant to this subsection to the atten-
7 tion of the public within the jurisdiction of such
8 agency.

9 “(b) JUDICIAL REVIEW.—

10 “(1) IN GENERAL.—If any State is dissatisfied
11 with the Secretary’s final action with respect to the
12 eligibility of the State under section 612, such State
13 may, not later than 60 days after notice of such ac-
14 tion, file with the United States court of appeals for
15 the circuit in which such State is located a petition
16 for review of that action. A copy of the petition shall
17 be forthwith transmitted by the clerk of the court to
18 the Secretary. The Secretary thereupon shall file in
19 the court the record of the proceedings upon which
20 the Secretary’s action was based, as provided in sec-
21 tion 2112 of title 28, United States Code.

22 “(2) JURISDICTION; REVIEW BY UNITED
23 STATES SUPREME COURT.—Upon the filing of such
24 petition, the court shall have jurisdiction to affirm
25 the action of the Secretary or to set it aside, in

1 whole or in part. The judgment of the court shall be
2 subject to review by the Supreme Court of the
3 United States upon certiorari or certification as pro-
4 vided in section 1254 of title 28, United States
5 Code.

6 “(3) STANDARD OF REVIEW.—The findings of
7 fact by the Secretary, if supported by substantial
8 evidence, shall be conclusive, but the court, for good
9 cause shown, may remand the case to the Secretary
10 to take further evidence, and the Secretary may
11 thereupon make new or modified findings of fact and
12 may modify the Secretary’s previous action, and
13 shall file in the court the record of the further pro-
14 ceedings. Such new or modified findings of fact shall
15 likewise be conclusive if supported by substantial evi-
16 dence.

17 **“SEC. 617. ADMINISTRATION.**

18 “(a) RESPONSIBILITIES OF SECRETARY.—In carry-
19 ing out this part, the Secretary shall—

20 “(1) cooperate with, and (directly or by grant
21 or contract) furnish technical assistance necessary
22 to, the State in matters relating to—

23 “(A) the education of children with disabil-
24 ities; and

25 “(B) carrying out this part; and

1 “(2) provide short-term training programs and
2 institutes.

3 “(b) RULES AND REGULATIONS.—In carrying out
4 the provisions of this part, the Secretary shall issue regu-
5 lations under this Act only to the extent that such regula-
6 tions are necessary to ensure that there is compliance with
7 the specific requirements of this Act.

8 “(c) CONFIDENTIALITY.—The Secretary shall take
9 appropriate action, in accordance with the provisions of
10 section 444 of the General Education Provisions Act (20
11 U.S.C. 1232g), to assure the protection of the confiden-
12 tiality of any personally identifiable data, information, and
13 records collected or maintained by the Secretary and by
14 State and local educational agencies pursuant to the provi-
15 sions of this part.

16 “(d) PERSONNEL.—The Secretary is authorized to
17 hire qualified personnel necessary to conduct data collec-
18 tion and evaluation activities authorized by subsection (a)
19 and section 618 without regard to the provisions of title
20 5, United States Code, relating to appointments in the
21 competitive service and without regard to chapter 51 and
22 subchapter III of chapter 53 of such title relating to classi-
23 fication and general schedule pay rates, except that no
24 more than twenty such personnel shall be employed at any
25 time.

1 **“SEC. 618. PROGRAM INFORMATION.**

2 “(a) IN GENERAL.—Each State that receives assist-
3 ance under this part, and the Secretary of the Interior,
4 shall provide data, which may be based on a sampling of
5 data, each year to the Secretary on—

6 “(1) the number of children, categorized by
7 race, ethnicity, gender, and disability, who are re-
8 ceiving—

9 “(A) a free appropriate public education;
10 or

11 “(B) early intervention services because—

12 “(i) such children have developmental
13 delays; or

14 “(ii) such children have a diagnosed
15 physical or mental condition that has a
16 high probability of resulting in devel-
17 opmental delay;

18 “(2) the progress of the State, and of the chil-
19 dren with disabilities in the State, toward meeting
20 the goals established under section 612(14);

21 “(3) the types of early intervention services pro-
22 vided to such children;

23 “(4) the number of children with disabilities,
24 categorized by race, ethnicity, gender, and disabil-
25 ity—

1 “(A) participating in regular education
2 programs;

3 “(B) in separate classes, separate schools
4 or facilities, or public or private residential fa-
5 cilities;

6 “(C) who have been otherwise removed
7 from the regular education environment; and

8 “(D) in various early intervention settings;

9 “(5) for each year of age from age 14 to 21,
10 the number of children with disabilities, categorized
11 by race, ethnicity, gender, and disability, who, be-
12 cause of program completion or for other reasons,
13 stopped receiving special education, and the reasons
14 why such children stopped receiving such special
15 education;

16 “(6)(A) the number of children with disabilities,
17 categorized by race, ethnicity, gender, and disability,
18 who, under section 615(k), are removed to an in-
19 terim alternative educational setting;

20 “(B) the acts or items precipitating such re-
21 movals; and

22 “(C) the number of children with disabilities
23 who are expelled from school without receiving serv-
24 ices; and

1 “(7) any other information required by the Sec-
2 retary.

3 “(b) DISPROPORTIONALITY.—

4 “(1) IN GENERAL.—Each State that receives
5 assistance under this part, and the Secretary of the
6 Interior, shall provide for the collection and exam-
7 ination of data to determine if significant
8 disproportionality based on race is occurring in the
9 State with respect to—

10 “(A) the identification of children as chil-
11 dren with disabilities, including the identifica-
12 tion of children as children with disabilities in
13 accordance with a particular impairment de-
14 scribed in section 602(3); and

15 “(B) the placement in particular edu-
16 cational settings of such children.

17 “(2) REVIEW AND REVISION OF POLICIES,
18 PRACTICES, AND PROCEDURES.—In the case of a de-
19 termination of significant disproportionality with re-
20 spect to the identification of children as children
21 with disabilities, or the placement in particular edu-
22 cational settings of such children, in accordance with

1 paragraph (1), the State or the Secretary of the In-
2 terior, as the case may be, shall provide for the re-
3 view and, if appropriate, revision of the policies, pro-
4 cedures, and practices used in such identification or
5 placement to ensure that such policies, procedures,
6 and practices comply with the requirements of this
7 Act.

8 **“SEC. 619. PRESCHOOL GRANTS.**

9 “(a) IN GENERAL.—The Secretary shall provide
10 grants under this section to assist States to provide special
11 education and related services, in accordance with this
12 part—

13 “(1) to children with disabilities aged 3 to 5, in-
14 clusive; and

15 “(2) at the State’s discretion, to 2-year-old chil-
16 dren with disabilities who will turn 3 during the
17 school year.

18 “(b) ELIGIBILITY.—A State shall be eligible for a
19 grant under this section if such State—

20 “(1) is eligible under section 612 to receive a
21 grant under this part; and

22 “(2) makes a free appropriate public education
23 available to all children with disabilities, aged 3 to
24 5, inclusive, residing in the State.

25 “(c) AMOUNT.—

1 “(1) IN GENERAL.—From the amount appro-
2 priated for any fiscal year pursuant to the author-
3 ization of appropriations under subsection (m), the
4 Secretary shall allot to each eligible State the
5 amount it received for fiscal year 1997 under this
6 section (as this section was in effect on the day be-
7 fore the date of the enactment of the IDEA Im-
8 provement Act of 1997).

9 “(2) INSUFFICIENT FUNDS.—

10 “(A) IN GENERAL.—If the amount appro-
11 priated under subsection (m) for a fiscal year is
12 insufficient to make the full allotments de-
13 scribed in paragraph (1), the Secretary shall—

14 “(i) first, reduce the allocation to any
15 State whose number of children aged 3 to
16 5, inclusive, is less than the number of
17 such children in such State in fiscal year
18 1996 by the same percentage by which
19 such number of children declined from the
20 number of children in fiscal year 1996; and

21 “(ii) second, if necessary, ratably re-
22 duce the allocations of all States, including
23 those allocations reduced under clause (i).

24 “(B) AVAILABILITY OF ADDITIONAL
25 FUNDS.—If additional funds become available

1 to make allocations under this section, the allo-
2 cations that were reduced under subparagraph
3 (A) shall be increased on the same basis as
4 such allocations were reduced.

5 “(d) ALLOTMENT OF REMAINING FUNDS.—After
6 making allotments under subsection (c), the Secretary
7 shall allot any remaining funds to eligible States on the
8 basis of their relative population of children aged 3 to 5,
9 inclusive.

10 “(e) SPECIAL RULE WITH RESPECT TO PUERTO
11 RICO.—Notwithstanding any other provision of this sub-
12 section, the amount allotted to Puerto Rico for a fiscal
13 year shall bear the same or lower proportion to the amount
14 appropriated pursuant to subsection (m) as the amount
15 received by Puerto Rico under this section for fiscal year
16 1997 bears to the aggregate of the amounts received by
17 all States under this section for fiscal year 1997.

18 “(f) DETERMINATION OF POPULATION FIGURES.—
19 For the purpose of providing grants under this section,
20 the Secretary shall use the most recent population data
21 that are available and satisfactory to the Secretary.

22 “(g) RESERVATION FOR STATE ACTIVITIES.—A
23 State may reserve not more than 25 percent of the amount
24 allotted to the State under this section for a fiscal year

1 for administration and other State-level activities in ac-
2 cordance with subsections (h) and (i).

3 “(h) STATE ADMINISTRATION.—

4 “(1) IN GENERAL.—A State may use up to 3
5 percent of the amount allotted to the State under
6 this section for a fiscal year for the purpose of ad-
7 ministering this section, including the coordination
8 of activities under this part with, and providing
9 technical assistance to, other programs that provide
10 services to children with disabilities.

11 “(2) USE OF AMOUNTS FOR ADMINISTRATION
12 OF PART C.—If the State educational agency is the
13 lead agency for the State under part C, amounts de-
14 scribed in paragraph (1) may also be used for the
15 administration of such part C.

16 “(i) OTHER STATE-LEVEL ACTIVITIES.—Each State
17 shall use any funds it retains under subsection (g) and
18 does not use for administration under subsection (h)—

19 “(1) for support services (including establishing
20 and implementing the mediation process required by
21 section 615(d)), which may benefit children with dis-
22 abilities younger than 3 or older than 5 as long as
23 those services also benefit children with disabilities
24 aged 3 to 5, inclusive;

1 “(2) for direct services for children eligible for
2 services under this section;

3 “(3) to develop a State improvement plan under
4 part D;

5 “(4) for activities at the State and local levels
6 to meet the performance goals established by the
7 State under section 612(a)(14) and to support im-
8 plementation of the State improvement plan under
9 part D if the State receives funds under that part;
10 or

11 “(5) to supplement other funds used to develop
12 and implement a Statewide coordinated services sys-
13 tem designed to improve results for children and
14 families, including children with disabilities and their
15 families, but not to exceed one percent of the
16 amount received by the State under this section for
17 a fiscal year.

18 “(j) SUBGRANTS TO LOCAL EDUCATIONAL AGEN-
19 CIES.—

20 “(1) REQUIREMENT TO MAKE SUBGRANTS.—

21 Each State that receives a grant under this section
22 for any fiscal year shall distribute at least 75 per-
23 cent of the grant funds to local educational agencies
24 in the State, and to State agencies that received
25 funds under section 614A(a) (as such section was in

1 effect on the day before the date of the enactment
2 of the IDEA Improvement Act of 1997) for fiscal
3 year 1997, that have established their eligibility
4 under section 613.

5 “(2) METHODS OF DISTRIBUTION.—A State
6 may distribute funds under paragraph (1) on the
7 basis of—

8 “(A) total school age population;

9 “(B) school enrollment;

10 “(C) numbers of children with disabilities
11 aged 3 to 5, inclusive, receiving a free appro-
12 priate public education;

13 “(D) allocations for previous fiscal years;

14 “(E) any two or more of the factors de-
15 scribed in subparagraphs (A) through (D); or

16 “(F) poverty, in combination with one or
17 more of the factors described in subparagraphs
18 (A) through (D).

19 “(k) PART C INAPPLICABLE.—Part C of this Act
20 does not apply to any child with a disability receiving a
21 free appropriate public education, in accordance with this
22 part, with funds received under this section.

23 “(l) PROHIBITION ON CONSOLIDATION OF GRANTS
24 FOR TERRITORIES.—The provisions of section 501 of

1 Public Law 95–134 (48 U.S.C. 1469a; relating to the con-
 2 solidation of one or more grants provided to certain terri-
 3 tories) shall not apply with respect to amounts provided
 4 to a territory under a grant under this section.

5 “(m) AUTHORIZATION OF APPROPRIATIONS.—For
 6 the purpose of carrying out this section, there are author-
 7 ized to be appropriated to the Secretary such sums as may
 8 be necessary.

9 **“PART C—INFANTS AND TODDLERS WITH**
 10 **DISABILITIES**

11 **“SEC. 631. FINDINGS AND POLICY.**

12 “(a) FINDINGS.—The Congress finds that there is an
 13 urgent and substantial need—

14 “(1) to enhance the development of infants and
 15 toddlers with disabilities and to minimize their po-
 16 tential for developmental delay;

17 “(2) to reduce the educational costs to our soci-
 18 ety, including our Nation’s schools, by minimizing
 19 the need for special education and related services
 20 after infants and toddlers with disabilities reach
 21 school age;

22 “(3) to minimize the likelihood of institutional-
 23 ization of individuals with disabilities and maximize
 24 the potential for their independently living in society;

1 “(4) to enhance the capacity of families to meet
2 the special needs of their infants and toddlers with
3 disabilities; and

4 “(5) to enhance the capacity of State and local
5 agencies and service providers to identify, evaluate,
6 and meet the needs of historically underrepresented
7 populations, particularly minority, low-income, inner-
8 city, and rural populations.

9 “(b) POLICY.—It is therefore the policy of the United
10 States to provide financial assistance to States—

11 “(1) to develop and implement a statewide,
12 comprehensive, coordinated, multidisciplinary, inter-
13 agency system of early intervention services for in-
14 fants and toddlers with disabilities and their fami-
15 lies;

16 “(2) to facilitate the coordination of payment
17 for early intervention services from Federal, State,
18 local, and private sources (including public and pri-
19 vate insurance coverage); and

20 “(3) to enhance their capacity to provide qual-
21 ity early intervention services and expand and im-
22 prove existing early intervention services being pro-
23 vided to infants and toddlers with disabilities and
24 their families.

1 **“SEC. 632. DEFINITIONS.**

2 “As used in this part:

3 “(1) AT-RISK INFANT OR TODDLER.—The term
4 ‘at-risk infant or toddler’ means an individual under
5 3 years of age who would be at risk of experiencing
6 a substantial developmental delay if early interven-
7 tion services were not provided to the individual.

8 “(2) COUNCIL.—The term ‘council’ means a
9 State interagency coordinating council established
10 under section 641.

11 “(3) DEVELOPMENTAL DELAY.—The term ‘de-
12 velopmental delay’, when used with respect to an in-
13 dividual residing in a State, has the meaning given
14 such term by the State under section 635(a)(1).

15 “(4) EARLY INTERVENTION SERVICES.—The
16 term ‘early intervention services’ means developmen-
17 tal services which—

18 “(A) are provided under public supervision;

19 “(B) are provided at no cost except where
20 Federal or State law provides for a system of
21 payments by families, including a schedule of
22 sliding fees;

23 “(C) are designed to meet the developmen-
24 tal needs of an infant or toddler with a disabil-
25 ity in any one or more of the following areas—

26 “(i) physical development;

1 “(ii) cognitive development;

2 “(iii) communication development;

3 “(iv) social or emotional development;

4 or

5 “(v) adaptive development;

6 “(D) meet the standards of the State in
7 which they are provided, including the require-
8 ments of this part;

9 “(E) include—

10 “(i) family training, counseling, and
11 home visits;

12 “(ii) special instruction;

13 “(iii) speech-language pathology and
14 audiology services;

15 “(iv) occupational therapy;

16 “(v) physical therapy;

17 “(vi) psychological services;

18 “(vii) service coordination services;

19 “(viii) medical services only for diag-
20 nostic or evaluation purposes;

21 “(ix) early identification, screening,
22 and assessment services;

23 “(x) health services necessary to en-
24 able the infant or toddler to benefit from
25 the other early intervention services;

1 “(xi) social work services;

2 “(xii) vision services;

3 “(xiii) assistive technology devices and
4 assistive technology services; and

5 “(xiv) transportation and related costs
6 that are necessary to enable an infant or
7 toddler and the infant’s or toddler’s family
8 to receive another service described in this
9 paragraph;

10 “(F) are provided by qualified personnel,
11 including—

12 “(i) special educators;

13 “(ii) speech-language pathologists and
14 audiologists;

15 “(iii) occupational therapists;

16 “(iv) physical therapists;

17 “(v) psychologists;

18 “(vi) social workers;

19 “(vii) nurses;

20 “(viii) nutritionists;

21 “(ix) family therapists;

22 “(x) orientation and mobility special-
23 ists; and

24 “(xi) pediatricians and other physi-
25 cians;

1 “(G) to the maximum extent appropriate,
2 are provided in natural environments, including
3 the home, and community settings in which
4 children without disabilities participate; and

5 “(H) are provided in conformity with an
6 individualized family service plan adopted in ac-
7 cordance with section 636.

8 “(5) INFANT OR TODDLER WITH A DISABIL-
9 ITY.—The term ‘infant or toddler with a disabil-
10 ity’—

11 “(A) means an individual under 3 years of
12 age who needs early intervention services be-
13 cause the individual—

14 “(i) is experiencing developmental
15 delays, as measured by appropriate diag-
16 nostic instruments and procedures in one
17 or more of the areas of cognitive develop-
18 ment, physical development, communica-
19 tion development, social or emotional devel-
20 opment, and adaptive development; or

21 “(ii) has a diagnosed physical or men-
22 tal condition which has a high probability
23 of resulting in developmental delay; and

24 “(B) may also include, at a State’s discre-
25 tion, at-risk infants and toddlers.

1 **“SEC. 633. GENERAL AUTHORITY.**

2 “The Secretary shall, in accordance with this part,
3 make grants to States (from their allocations under sec-
4 tion 643) to assist each State to maintain and implement
5 a statewide, comprehensive, coordinated, multidisciplinary,
6 interagency system to provide early intervention services
7 for infants and toddlers with disabilities and their families.

8 **“SEC. 634. ELIGIBILITY.**

9 “In order to be eligible for a grant under section 633,
10 a State shall demonstrate to the Secretary that the
11 State—

12 “(1) has adopted a policy that appropriate early
13 intervention services are available to all infants and
14 toddlers with disabilities in the State and their fami-
15 lies, including Indian infants and toddlers with dis-
16 abilities and their families residing on a reservation
17 geographically located in the State; and

18 “(2) has in effect a statewide system that meets
19 the requirements of section 635.

20 **“SEC. 635. REQUIREMENTS FOR STATEWIDE SYSTEM.**

21 “(a) IN GENERAL.—A statewide system described in
22 section 633 shall include, at a minimum, the following
23 components:

24 “(1) A definition of the term ‘developmental
25 delay’ that will be used by the State in carrying out
26 programs under this part.

1 “(2) A timely, comprehensive, multidisciplinary
2 evaluation of the functioning of each infant or tod-
3 dler with a disability in the State, and a family-
4 directed identification of the needs of each family of
5 such an infant or toddler, to appropriately assist in
6 the development of the infant or toddler.

7 “(3) For each infant or toddler with a disability
8 in the State, an individualized family service plan in
9 accordance with section 636, including service co-
10 ordination services in accordance with such service
11 plan.

12 “(4) A comprehensive child find system, con-
13 sistent with part B, including a system for making
14 referrals to service providers that includes timelines
15 and provides for participation by primary referral
16 sources.

17 “(5) A public awareness program focusing on
18 early identification of infants and toddlers with dis-
19 abilities, including the preparation and dissemination
20 by the lead agency designated or established under
21 paragraph (8) to all primary referral sources, espe-
22 cially hospitals and physicians, of information for
23 parents on the availability of early intervention serv-
24 ices, and procedures for determining the extent to

1 which such sources disseminate such information to
2 parents of infants and toddlers.

3 “(6) A central directory which includes infor-
4 mation on early intervention services, resources, and
5 experts available in the State and research and dem-
6 onstration projects being conducted in the State.

7 “(7) A comprehensive system of personnel de-
8 velopment, including the training of paraprofes-
9 sionals and the training of primary referral sources
10 respecting the basic components of early intervention
11 services available in the State, that is consistent
12 with the comprehensive system of personnel develop-
13 ment described in section 612(a)(13) (or with the
14 personnel development requirements for State im-
15 provement plans under section 683) and may in-
16 clude—

17 “(A) implementing innovative strategies
18 and activities for the recruitment and retention
19 of early education service providers;

20 “(B) promoting the preparation of early
21 intervention providers who are fully and appro-
22 priately qualified to provide early intervention
23 services under this part;

24 “(C) training personnel to work in rural
25 and inner city areas; and

1 “(D) training personnel to coordinate tran-
2 sition services for infants and toddlers served
3 under this part from an early intervention pro-
4 gram under this part to preschool or other ap-
5 propriate services.

6 “(8) Policies and procedures relating to the es-
7 tablishment and maintenance of standards to ensure
8 that personnel necessary to carry out this part are
9 appropriately and adequately prepared and trained,
10 including—

11 “(A) the establishment and maintenance of
12 standards which are consistent with any State
13 approved or recognized certification, licensing,
14 registration, or other comparable requirements
15 which apply to the area in which such personnel
16 are providing early intervention services; and

17 “(B) subject to subsection (b), to the ex-
18 tent such standards are not based on the high-
19 est requirements in the State applicable to a
20 specific profession or discipline, the steps the
21 State is taking to require the retraining or hir-
22 ing of personnel that meet appropriate profes-
23 sional requirements in the State;

1 except that nothing in this part, including this para-
2 graph, prohibits the use of paraprofessionals and as-
3 sistants who are appropriately trained and super-
4 vised, in accordance with State law, regulations, or
5 written policy, to assist in the provision of early
6 intervention services to infants and toddlers with
7 disabilities under this part.

8 “(9) A single line of responsibility in a lead
9 agency designated or established by the Governor for
10 carrying out—

11 “(A) the general administration and super-
12 vision of programs and activities receiving as-
13 sistance under section 633, and the monitoring
14 of programs and activities used by the State to
15 carry out this part, whether or not such pro-
16 grams or activities are receiving assistance
17 made available under section 633, to ensure
18 that the State complies with this part;

19 “(B) the identification and coordination of
20 all available resources within the State from
21 Federal, State, local and private sources;

22 “(C) the assignment of financial respon-
23 sibility in accordance with section 637(a)(1) to
24 the appropriate agencies;

1 “(D) the development of procedures to en-
2 sure that services are provided to infants and
3 toddlers and their families under this part in a
4 timely manner pending the resolution of any
5 disputes among public agencies or service pro-
6 viders;

7 “(E) the resolution of intra- and inter-
8 agency disputes; and

9 “(F) the entry into formal interagency
10 agreements that define the financial responsibil-
11 ity of each agency for paying for early interven-
12 tion services (consistent with State law) and
13 procedures for resolving disputes and that in-
14 clude all additional components necessary to en-
15 sure meaningful cooperation and coordination.

16 “(10) A policy pertaining to the contracting or
17 making of other arrangements with service providers
18 to provide early intervention services in the State,
19 consistent with the provisions of this part, including
20 the contents of the application used and the condi-
21 tions of the contract or other arrangements.

22 “(11) A procedure for securing timely reim-
23 bursement of funds used under this part in accord-
24 ance with section 640(a).

1 “(12) Procedural safeguards with respect to
2 programs under this part, as required by section
3 639.

4 “(13) A system for compiling data requested by
5 the Secretary under section 618 that relates to this
6 part.

7 “(14) A State interagency coordinating council
8 that meets the requirements of section 641.

9 “(15) Policies and procedures to ensure that,
10 consistent with section 636(d)(5)—

11 “(A) to the maximum extent appropriate,
12 early intervention services are provided in natu-
13 ral environments; and

14 “(B) the provision of early intervention
15 services for any infant or toddler occurs in a
16 setting other than a natural environment only
17 when early intervention cannot be achieved sat-
18 isfactorily for such infant or toddler in a natu-
19 ral environment.

20 “(b) MODIFICATION OF PERSONNEL REQUIRE-
21 MENT.—If a State determines that the requirement of
22 subsection (a)(8)(B) would significantly inhibit the ability
23 of the State to contract with, or employ, an appropriate
24 number and types of personnel to provide early interven-
25 tion services to infants and toddlers with disabilities in

1 a geographic region, the State may, subject to public no-
2 tice and comment, temporarily suspend the requirement
3 for the region, in a manner consistent with State law and
4 for a period not exceeding 3 years, with respect to the
5 most qualified available individuals in shortage areas who
6 are making annual progress in applicable coursework.

7 **“SEC. 636. INDIVIDUALIZED FAMILY SERVICE PLAN.**

8 “(a) ASSESSMENT AND PROGRAM DEVELOPMENT.—
9 A statewide system described in section 633 shall provide,
10 at a minimum, for each infant or toddler with a disability,
11 and the infant’s or toddler’s family, to receive—

12 “(1) a multidisciplinary assessment of the
13 unique strengths and needs of the infant or toddler
14 and the identification of services appropriate to meet
15 such needs;

16 “(2) a family-directed assessment of the re-
17 sources, priorities, and concerns of the family and
18 the identification of the supports and services nec-
19 essary to enhance the family’s capacity to meet the
20 developmental needs of the infant or toddler; and

21 “(3) a written individualized family service plan
22 developed by a multidisciplinary team, including the
23 parents, as required by subsection (e).

24 “(b) PERIODIC REVIEW.—The individualized family
25 service plan shall be evaluated once a year and the family

1 shall be provided a review of the plan at 6-month intervals
2 (or more often where appropriate based on infant or tod-
3 dler and family needs).

4 “(c) PROMPTNESS AFTER ASSESSMENT.—The indi-
5 vidualized family service plan shall be developed within a
6 reasonable time after the assessment required by sub-
7 section (a)(1) is completed. With the parents’ consent,
8 early intervention services may commence prior to the
9 completion of such assessment.

10 “(d) CONTENT OF PLAN.—The individualized family
11 service plan shall be in writing and contain—

12 “(1) a statement of the infant’s or toddler’s
13 present levels of physical development, cognitive de-
14 velopment, communication development, social or
15 emotional development, and adaptive development,
16 based on objective criteria;

17 “(2) a statement of the family’s resources, pri-
18 orities, and concerns relating to enhancing the devel-
19 opment of the family’s infant or toddler with a dis-
20 ability;

21 “(3) a statement of the major outcomes ex-
22 pected to be achieved for the infant or toddler and
23 the family, and the criteria, procedures, and
24 timelines used to determine the degree to which
25 progress toward achieving the outcomes is being

1 made and whether modifications or revisions of the
2 outcomes or services are necessary;

3 “(4) a statement of specific early intervention
4 services necessary to meet the unique needs of the
5 infant or toddler and the family, including the fre-
6 quency, intensity, and method of delivering services;

7 “(5) a statement of the natural environments in
8 which early intervention services shall appropriately
9 be provided, including a justification of the extent,
10 if any, to which such services will not be provided in
11 a natural environment;

12 “(6) the projected dates for initiation of serv-
13 ices and the anticipated duration of such services;

14 “(7) the identification of the service coordinator
15 from the profession most immediately relevant to the
16 infant’s or toddler’s or family’s needs (or who is oth-
17 erwise qualified to carry out all applicable respon-
18 sibilities under this part) who will be responsible for
19 the implementation of the plan and coordination
20 with other agencies and persons; and

21 “(8) the steps to be taken to support the transi-
22 tion of the toddler with a disability to preschool or
23 other appropriate services.

24 “(e) PARENTAL CONSENT.—The contents of the indi-
25 vidualized family service plan shall be fully explained to

1 the parents and informed written consent from such par-
 2 ents shall be obtained prior to the provision of early inter-
 3 vention services described in such plan. If such parents
 4 do not provide such consent with respect to a particular
 5 early intervention service, then the early intervention serv-
 6 ices to which such consent is obtained shall be provided.

7 **“SEC. 637. STATE APPLICATION AND ASSURANCES.**

8 “(a) APPLICATION.—A State desiring to receive a
 9 grant under section 633 shall submit an application to the
 10 Secretary at such time and in such manner as the Sec-
 11 retary may reasonably require. Such application shall con-
 12 tain—

13 “(1) a designation of the lead agency in the
 14 State that will be responsible for the administration
 15 of funds provided under section 633;

16 “(2) a designation of a person responsible for
 17 assigning financial responsibility among appropriate
 18 agencies;

19 “(3) information demonstrating eligibility of the
 20 State under section 634, including—

21 “(A) information demonstrating to the
 22 Secretary’s satisfaction that the State has in ef-
 23 fect the statewide system required by section
 24 633; and

1 “(B) a description of services to be pro-
2 vided to infants and toddlers with disabilities
3 and their families through the system;

4 “(4) a description of the uses for which funds
5 will be expended in accordance with this part;

6 “(5) a description of the procedure used to en-
7 sure that resources are made available under this
8 part for all geographic areas within the State;

9 “(6) a description of State policies and proce-
10 dures that ensure that, prior to the adoption by the
11 State of any other policy or procedure necessary to
12 meet the requirements of this part, there are public
13 hearings, adequate notice of the hearings, and an
14 opportunity for comment available to the general
15 public, including individuals with disabilities and
16 parents of infants and toddlers with disabilities;

17 “(7) a description of the policies and procedures
18 to be used—

19 “(A) to ensure a smooth transition for tod-
20 dlers receiving early intervention services under
21 this part to preschool or other appropriate serv-
22 ices, including a description of how—

23 “(i) the families of such toddlers will
24 be included in the transition plans required
25 by subparagraph (C); and

1 “(ii) the lead agency designated or es-
2 tablished under section 635(a) will—

3 “(I) notify the local educational
4 agency for the area in which such a
5 child resides that the child will shortly
6 reach the age of eligibility for pre-
7 school services under part B, as deter-
8 mined in accordance with State law;

9 “(II) in the case of such a child
10 who may be eligible for such preschool
11 services, with the approval of the fam-
12 ily of the child, convene a conference
13 among the lead agency, the family,
14 and the local educational agency at
15 least 90 days (and at the discretion of
16 all such parties, up to 6 months) be-
17 fore the child is eligible for the pre-
18 school services, to discuss any such
19 services that the child may receive;
20 and

21 “(III) in the case of such a child
22 who may not be eligible for such pre-
23 school services, with the approval of
24 the family, make reasonable efforts to
25 convene a conference among the lead

1 agency, the family, and providers of
2 other appropriate services for children
3 who are not eligible for preschool serv-
4 ices under part B, to discuss the ap-
5 propriate services that the child may
6 receive;

7 “(B) to review the child’s program options
8 for the period from the child’s third birthday
9 through the remainder of the school year; and

10 “(C) to establish a transition plan; and

11 “(8) such other information and assurances as
12 the Secretary may reasonably require.

13 “(b) ASSURANCES.—The application described in
14 subsection (a) shall contain the following:

15 “(1) A satisfactory assurance that the State
16 will—

17 “(A) make such reports in such form and
18 containing such information as the Secretary
19 may require to carry out the Secretary’s func-
20 tions under this part; and

21 “(B) keep such records and afford such ac-
22 cess thereto as the Secretary may find nec-
23 essary to assure the correctness and verification
24 of such reports and proper disbursement of
25 Federal funds under this part.

1 “(2) A satisfactory assurance that Federal
2 funds made available under section 633 will be used
3 to supplement and increase the level of State and
4 local funds expended for infants and toddlers with
5 disabilities and their families under this part and in
6 no case to supplant such State and local funds.

7 “(3) Such other information and assurances as
8 the Secretary may reasonably require by regulation.

9 “(c) STANDARD FOR DISAPPROVAL OF APPLICA-
10 TION.—The Secretary may not disapprove such an appli-
11 cation unless the Secretary determines, after notice and
12 opportunity for a hearing, that the application fails to
13 comply with the requirements of this section.

14 “(d) SUBSEQUENT STATE APPLICATION.—If a State
15 has on file with the Secretary a policy, procedure, or as-
16 surance that demonstrates that the State meets a require-
17 ment of this section, including any policy or procedure
18 filed under part H (as in effect before the date of the en-
19 actment of the IDEA Improvement Act of 1996), the Sec-
20 retary shall consider the State to have met the require-
21 ment for purposes of receiving a grant under this part.

22 “(e) MODIFICATION OF APPLICATION.—An applica-
23 tion submitted by a State in accordance with this section

1 shall remain in effect until the State submits to the Sec-
2 retary such modifications as the State determines nec-
3 essary. This section shall apply to a modification of an
4 application to the same extent and in the same manner
5 as this section applies to the original application.

6 **“SEC. 638. USES OF FUNDS.**

7 “In addition to using funds provided under section
8 633 to maintain and implement the statewide system re-
9 quired by such section, a State may use such funds—

10 “(1) for direct early intervention services for in-
11 fants and toddlers with disabilities, and their fami-
12 lies, under this part that are not otherwise funded
13 through other public or private sources;

14 “(2) to expand and improve on services for in-
15 fants and toddlers and their families under this part
16 that are otherwise available; and

17 “(3) to provide a free appropriate public edu-
18 cation, in accordance with part B, to children with
19 disabilities from their third birthday to the begin-
20 ning of the following school year.

21 **“SEC. 639. PROCEDURAL SAFEGUARDS.**

22 “(a) MINIMUM PROCEDURES.—The procedural safe-
23 guards required to be included in a statewide system
24 under section 635(a)(10) shall provide, at a minimum, the
25 following:

1 “(1) The timely administrative resolution of
2 complaints by parents. Any party aggrieved by the
3 findings and decision regarding an administrative
4 complaint shall have the right to bring a civil action
5 with respect to the complaint in any State court of
6 competent jurisdiction or in a district court of the
7 United States without regard to the amount in con-
8 troversy. In any action brought under this para-
9 graph, the court shall receive the records of the ad-
10 ministrative proceedings, shall hear additional evi-
11 dence at the request of a party, and, basing its deci-
12 sion on the preponderance of the evidence, shall
13 grant such relief as the court determines is appro-
14 priate.

15 “(2) The right to confidentiality of personally
16 identifiable information, including the right of par-
17 ents to written notice of and written consent to the
18 exchange of such information among agencies con-
19 sistent with Federal and State law.

20 “(3) The right of the parents to determine
21 whether they, their infant or toddler, or other family
22 members will accept or decline any early intervention
23 service under this part in accordance with State law
24 without jeopardizing other early intervention services
25 under this part.

1 “(4) The opportunity for parents to examine
2 records relating to assessment, screening, eligibility
3 determinations, and the development and implemen-
4 tation of the individualized family service plan.

5 “(5) Procedures to protect the rights of the in-
6 fant or toddler whenever the parents of the child are
7 not known or cannot be found or the child is a ward
8 of the State, including the assignment of an individ-
9 ual (who shall not be an employee of the State or
10 any person, or any employee of a person, providing
11 early intervention services to the infant or toddler or
12 any family member of the infant or toddler) to act
13 as a surrogate for the parents.

14 “(6) Written prior notice to the parents of the
15 infant or toddler with a disability whenever the State
16 agency or service provider proposes to initiate or
17 change or refuses to initiate or change the identifica-
18 tion, evaluation, placement, or the provision of ap-
19 propriate early intervention services to the infant or
20 toddler with a disability.

21 “(7) Procedures designed to assure that the no-
22 tice required by paragraph (6) fully informs the par-
23 ents, in the parents’ native language, unless it clear-
24 ly is not feasible to do so, of all procedures available
25 pursuant to this section.

1 “(8) The right of parents to use mediation in
2 accordance with section 615(e), except that—

3 “(A) any reference in such section to a
4 State educational agency shall be considered to
5 be a reference to a State’s lead agency estab-
6 lished or designated under section 635(a)(8);

7 “(B) any reference in such section to a
8 local educational agency shall be considered to
9 be a reference to a local service provider or the
10 State’s lead agency under this part, as the case
11 may be; and

12 “(C) any reference in such section to the
13 provision of free appropriate public education to
14 children with disabilities shall be considered to
15 be a reference to the provision of appropriate
16 early intervention services to infants and tod-
17 dlers with disabilities.

18 “(b) SERVICES DURING PENDENCY OF PROCEED-
19 INGS.—During the pendency of any proceeding or action
20 involving a complaint by the parents of an infant or tod-
21 dler with a disability, unless the State agency and the par-
22 ents otherwise agree, the infant or toddler shall continue
23 to receive the appropriate early intervention services cur-
24 rently being provided or, if applying for initial services,
25 shall receive the services not in dispute.

1 **“SEC. 640. PAYOR OF LAST RESORT.**

2 “(a) NONSUBSTITUTION.—Funds provided under
3 section 643 may not be used to satisfy a financial commit-
4 ment for services which would have been paid for from
5 another public or private source but for the enactment of
6 this part, except that whenever considered necessary to
7 prevent a delay in the receipt of appropriate early inter-
8 vention services by an infant, toddler, or family in a timely
9 fashion, funds provided under section 643 may be used
10 to pay the provider of services pending reimbursement
11 from the agency which has ultimate responsibility for the
12 payment.

13 “(b) REDUCTION OF OTHER BENEFITS.—Nothing in
14 this part shall be construed to permit the State to reduce
15 medical or other assistance available or to alter eligibility
16 under title V of the Social Security Act (relating to mater-
17 nal and child health) or title XIX of the Social Security
18 Act (relating to medicaid for infants or toddlers with dis-
19 abilities) within the State.

20 **“SEC. 641. STATE INTERAGENCY COORDINATING COUNCIL.**

21 “(a) ESTABLISHMENT.—

22 “(1) IN GENERAL.—A State that desires to re-
23 ceive financial assistance under this part shall estab-
24 lish a State interagency coordinating council.

25 “(2) APPOINTMENT.—The council shall be ap-
26 pointed by the Governor. In making appointments to

1 the council, the Governor shall ensure that the mem-
2 bership of the council reasonably represents the pop-
3 ulation of the State.

4 “(3) CHAIRPERSON.—The Governor shall des-
5 ignate a member of the council to serve as the chair-
6 person of the council, or shall require the council to
7 so designate such a member. Any member of the
8 council who is a representative of the lead agency
9 designated under section 635(b)(8) may not serve as
10 the chairperson of the council.

11 “(b) COMPOSITION.—

12 “(1) IN GENERAL.—The council shall be com-
13 posed as follows:

14 “(A) PARENTS.—At least 20 percent of
15 the members shall be parents of infants or tod-
16 dlers with disabilities or children with disabil-
17 ities aged 12 or younger, with knowledge of, or
18 experience with, programs for infants and tod-
19 dlers with disabilities. At least one such mem-
20 ber shall be a parent of an infant or toddler
21 with a disability or a child with a disability
22 aged 6 or younger.

23 “(B) SERVICE PROVIDERS.—At least 20
24 percent of the members shall be public or pri-
25 vate providers of early intervention services.

1 “(C) STATE LEGISLATURE.—At least one
2 member shall be from the State legislature.

3 “(D) PERSONNEL PREPARATION.—At least
4 one member shall be involved in personnel prep-
5 aration.

6 “(E) AGENCY FOR EARLY INTERVENTION
7 SERVICES.—At least one member shall be from
8 each of the State agencies involved in the provi-
9 sion of, or payment for, early intervention serv-
10 ices to infants and toddlers with disabilities and
11 their families and shall have sufficient authority
12 to engage in policy planning and implementa-
13 tion on behalf of such agencies.

14 “(F) AGENCY FOR PRESCHOOL SERV-
15 ICES.—At least one member shall be from the
16 State educational agency responsible for pre-
17 school services to children with disabilities and
18 shall have sufficient authority to engage in pol-
19 icy planning and implementation on behalf of
20 such agency.

21 “(G) AGENCY FOR INSURANCE.—At least
22 one member shall be from the agency respon-
23 sible for the State governance of insurance, es-
24 pecially in the area of health insurance.

1 “(H) HEAD START AGENCY.—A represent-
2 ative from a Head Start agency or program in
3 the State.

4 “(I) A representative from a State agency
5 responsible for child care.

6 “(2) OTHER MEMBERS.—The council may in-
7 clude other members selected by the Governor, in-
8 cluding a representative from the Bureau of Indian
9 Affairs, or where there is no BIA operated or funded
10 school, from the Indian Health Service or the tribe/
11 tribal council.

12 “(c) MEETINGS.—The council shall meet at least
13 quarterly and in such places as it deems necessary. The
14 meetings shall be publicly announced, and, to the extent
15 appropriate, open and accessible to the general public.

16 “(d) MANAGEMENT AUTHORITY.—Subject to the ap-
17 proval of the Governor, the council may prepare and ap-
18 prove a budget using funds under this part to conduct
19 hearings and forums, to reimburse members of the council
20 for reasonable and necessary expenses for attending coun-
21 cil meetings and performing council duties (including child
22 care for parent representatives), to pay compensation to
23 a member of the council if such member is not employed

1 or must forfeit wages from other employment when per-
2 forming official council business, to hire staff, and to ob-
3 tain the services of such professional, technical, and cleri-
4 cal personnel as may be necessary to carry out its func-
5 tions under this part.

6 “(e) FUNCTIONS OF COUNCIL.—

7 “(1) DUTIES.—The council shall—

8 “(A) advise and assist the lead agency des-
9 ignated or established under section 635(b)(8)
10 in the performance of the responsibilities set
11 out in such section, particularly the identifica-
12 tion of the sources of fiscal and other support
13 for services for early intervention programs, as-
14 signment of financial responsibility to the ap-
15 propriate agency, and the promotion of the
16 interagency agreements;

17 “(B) advise and assist the lead agency in
18 the preparation of applications and amend-
19 ments thereto;

20 “(C) advise and assist the State edu-
21 cational agency regarding the transition of tod-
22 dlers with disabilities to preschool and other ap-
23 propriate services; and

24 “(D) prepare and submit an annual report
25 to the Governor and to the Secretary on the

1 status of early intervention programs for in-
2 fants and toddlers with disabilities and their
3 families operated within the State.

4 “(2) AUTHORIZED ACTIVITY.—The council may
5 advise and assist the lead agency and the State edu-
6 cational agency regarding the provision of appro-
7 priate services for children aged birth to 5, inclusive.

8 “(f) CONFLICT OF INTEREST.—No member of the
9 council shall cast a vote on any matter which would pro-
10 vide direct financial benefit to that member or otherwise
11 give the appearance of a conflict of interest under State
12 law.

13 **“SEC. 642. FEDERAL ADMINISTRATION.**

14 “Sections 616, 617, 618, and 620 shall, to the extent
15 not inconsistent with this part, apply to the program au-
16 thorized by this part, except that—

17 “(1) any reference in such sections to a State
18 educational agency shall be considered to be a ref-
19 erence to a State’s lead agency established or des-
20 ignated under section 635(a)(8);

21 “(2) any reference in such sections to a local
22 educational agency, educational service agency, or a
23 State agency shall be considered to be a reference to
24 an early intervention service provider under this
25 part; and

1 “(3) any reference to the education of children
 2 with disabilities or the education of all children with
 3 disabilities shall be considered to be a reference to
 4 the provision of appropriate early intervention serv-
 5 ices to infants and toddlers with disabilities.

6 **“SEC. 643. ALLOCATION OF FUNDS.**

7 “(a) RESERVATION OF FUNDS FOR TERRITORIES.—

8 “(1) IN GENERAL.—From the sums appro-
 9 priated to carry out this part for any fiscal year, the
 10 Secretary may reserve up to one percent for pay-
 11 ments to Guam, American Samoa, the Virgin Is-
 12 lands, and the Commonwealth of the Northern Mari-
 13 ana Islands in accordance with their respective
 14 needs.

15 “(2) CONSOLIDATION OF FUNDS.—The provi-
 16 sions of Public Law 95–134, permitting the consoli-
 17 dation of grants to the territories, shall not apply to
 18 funds those areas receive under this part.

19 “(b) PAYMENTS TO INDIANS.—

20 “(1) IN GENERAL.—The Secretary shall, sub-
 21 ject to this subsection, make payments to the Sec-
 22 retary of the Interior to be distributed to tribes,
 23 tribal organizations (as defined under section 4 of
 24 the Indian Self-Determination and Education Assist-
 25 ance Act), or consortia of the above entities for the

1 coordination of assistance in the provision of early
2 intervention services by the States to infants and
3 toddlers with disabilities and their families on res-
4 ervations served by elementary and secondary
5 schools for Indian children operated or funded by
6 the Department of the Interior. The amount of such
7 payment for any fiscal year shall be 1.25 percent of
8 the aggregate of the amount available to all States
9 under this part for such fiscal year.

10 “(2) ALLOCATION.—For each fiscal year, the
11 Secretary of the Interior shall distribute the entire
12 payment received under paragraph (1) by providing
13 to each tribe, tribal organization, or consortium an
14 amount based on the number of infants and toddlers
15 residing on the reservation as determined annually
16 divided by the total of such children served by all
17 tribes, tribal organizations, or consortia.

18 “(3) INFORMATION.—To receive a payment
19 under this paragraph, the tribe, tribal organization,
20 or consortia shall submit such information to the
21 Secretary of the Interior as is needed to determine
22 the amounts to be allocated under paragraph (2).

23 “(4) USE OF FUNDS.—The funds received by a
24 tribe, tribal organization, or consortia shall be used
25 to assist States in child find, screening, and other

1 procedures for the early identification of Indian chil-
2 dren under 3 years of age and for parent training.
3 Such funds may also be used to provide early inter-
4 vention services in accordance with this part. Such
5 activities may be carried out directly or through con-
6 tracts or cooperative agreements with the BIA, local
7 educational agencies, and other public or private
8 nonprofit organizations. The tribe, tribal organiza-
9 tion, or consortia is encouraged to involve Indian
10 parents in the development and implementation of
11 these activities. The above entities shall, as appro-
12 priate, make referrals to local, State, or Federal en-
13 tities for the provision of services or further diag-
14 nosis.

15 “(5) REPORTS.—To be eligible to receive a
16 grant under paragraph (2), a tribe, tribal organiza-
17 tion, or consortia shall make a biennial report to the
18 Secretary of the Interior of activities undertaken
19 under this subsection, including the number of con-
20 tracts and cooperative agreements entered into, the
21 number of children contacted and receiving services
22 for each year, and the estimated number of children
23 needing services during the 2 years following the
24 year in which the report is made. The Secretary of

1 the Interior shall include a summary of this informa-
2 tion on a biennial basis to the Secretary of Edu-
3 cation along with such other information as required
4 under section 611(f)(3)(D). The Secretary of Edu-
5 cation may require any additional information from
6 the Secretary of the Interior.

7 “(6) PROHIBITED USES OF FUNDS.—None of
8 the funds under this subsection may be used by the
9 Secretary of the Interior for administrative pur-
10 poses, including child count, and the provision of
11 technical assistance.

12 “(c) STATE ALLOTMENTS.—

13 “(1) IN GENERAL.—Except as provided in para-
14 graphs (2), (3), and (4), from the funds remaining
15 for each fiscal year after the reservation and pay-
16 ments under subsections (a) and (b), the Secretary
17 shall first allot to each State an amount that bears
18 the same ratio to the amount of such remainder as
19 the number of infants and toddlers in the State
20 bears to the number of infants and toddlers in all
21 States.

22 “(2) MINIMUM ALLOTMENTS.—Except as pro-
23 vided in paragraphs (3) and (4), no State shall re-
24 ceive an amount under this section for any fiscal
25 year that is less than the greatest of—

1 “(A) one-half of one percent of the remain-
2 ing amount described in paragraph (1); or

3 “(B) \$500,000.

4 “(3) SPECIAL RULE FOR 1998 AND 1999.—

5 “(A) IN GENERAL.—Except as provided in
6 paragraph (4), no State may receive an amount
7 under this section for either fiscal year 1998 or
8 1999 that is less than the sum of the amounts
9 such State received for fiscal year 1994
10 under—

11 “(i) part H (as in effect on the day
12 before the date of the enactment of the
13 IDEA Improvement Act of 1997); and

14 “(ii) subpart 2 of part D of chapter 1
15 of title I of the Elementary and Secondary
16 Education Act of 1965 (as in effect on the
17 day before the date of the enactment of the
18 Improving America’s Schools Act of 1994)
19 for children with disabilities under 3 years
20 of age.

21 “(B) EXCEPTION.—If, for fiscal year 1998
22 or 1999, the number of infants and toddlers in
23 a State, as determined under paragraph (1), is
24 less than the number of infants and toddlers so

determined for fiscal year 1994, the amount determined under subparagraph (A) for the State shall be reduced by the same percentage by which the number of such infants and toddlers so declined.

“(4) Ratable Reduction.—

“(A) IN GENERAL.—If the sums made available under this part for any fiscal year are insufficient to pay the full amounts that all States are eligible to receive under this subsection for such year, the Secretary shall ratably reduce the allocations to such States for such year.

“(B) ADDITIONAL FUNDS.—If additional funds become available for making payments under this subsection for a fiscal year, allocations that were reduced under subparagraph (A) shall be increased on the same basis as such allocations were reduced.

“(5) DEFINITIONS.—For the purpose of this subsection—

“(A) the terms ‘infants’ and ‘toddlers’ mean children under 3 years of age; and

1 “(B) the term ‘State’ means each of the 50
2 States, the District of Columbia, and the Com-
3 monwealth of Puerto Rico.

4 “(d) REALLOTMENT OF FUNDS.—If a State elects
5 not to receive its allotment under subsection (c), the Sec-
6 retary shall realLOT, among the remaining States, amounts
7 from such State in accordance with such subsection.

8 **“SEC. 644. AUTHORIZATION OF APPROPRIATIONS.**

9 “For the purpose of carrying out this part, there are
10 authorized to be appropriated such sums as may be nec-
11 essary for each of the fiscal years 1998 through 2002.

12 **“PART D—NATIONAL ACTIVITIES TO IMPROVE**
13 **EDUCATION OF CHILDREN WITH DISABILITIES**

14 **“SEC. 651. PURPOSE OF PART.**

15 “The purpose of this part is to support national,
16 State, and local activities aimed at improving educational,
17 early intervention, and transitional services and opportuni-
18 ties for children with disabilities.

19 **“SEC. 652. ELIGIBILITY FOR FINANCIAL ASSISTANCE.**

20 “No State, State educational agency, local edu-
21 cational agency, educational service agency, or other pub-
22 lic institution or agency may receive a grant, contract, or
23 cooperative agreement under this part which relates exclu-
24 sively to programs, projects, and activities for children
25 aged 3 to 5, inclusive, unless the State, or, in the case

1 of an agency or institution, the State in which the agency
2 or institution is located, is eligible to receive a grant under
3 section 619.

4 **“SEC. 653. COMPREHENSIVE PLAN.**

5 “(a) IN GENERAL.—The Secretary shall develop and
6 implement a comprehensive plan for ongoing activities
7 conducted by the Secretary under this part.

8 “(b) USE OF KNOWLEDGE IN DEVELOPING PLAN.—
9 To the maximum extent appropriate, the Secretary shall
10 ensure that the plan is based upon the knowledge gained
11 from research on practices that have been proven effective
12 in improving the achievement of children with disabilities.

13 “(c) CONSULTATION.—In developing the plan, the
14 Secretary shall consult the following persons:

15 “(1) Individuals with disabilities.

16 “(2) Parents of children with disabilities.

17 “(3) Representatives of State and local edu-
18 cational agencies and educational service agencies.

19 “(4) Private schools.

20 “(5) Institutions of higher education.

21 “(6) Other Federal agencies.

22 “(7) The National Council on Disability.

23 “(8) National organizations with an interest in,
24 and expertise in, providing services to children with
25 disabilities and their families.

1 “(9) Any other professionals determined appro-
2 priate by the Secretary.

3 “(d) DEADLINE.—The plan shall be developed not
4 later than the date that is 12 months after the date of
5 the enactment of the IDEA Improvement Act of 1997.

6 **“SEC. 654. PEER REVIEW.**

7 “(a) IN GENERAL.—The Secretary shall use a panel
8 of experts who are competent, by virtue of their training,
9 expertise, or experience, to evaluate an application under
10 this part that requests more than \$75,000 in Federal fi-
11 nancial assistance.

12 “(b) COMPOSITION OF PANEL.—A majority of a
13 panel described in subsection (a) shall be composed of in-
14 dividuals who are not employees of the Federal Govern-
15 ment.

16 “(c) PAYMENT OF FEES AND EXPENSES OF CERTAIN
17 MEMBERS.—The Secretary may use available funds ap-
18 propriated to carry out this part to pay the expenses and
19 fees of panel members who are not employees of the Fed-
20 eral Government.

21 **“SEC. 655. ELIGIBLE APPLICANTS.**

22 “Except as otherwise provided in this part, the per-
23 sons who, and the agencies that, may apply for receipt
24 of grants, contracts, or cooperative agreements under this
25 part are the following:

1 “(1) Institutions of higher education.

2 “(2) State educational agencies.

3 “(3) Local educational agencies.

4 “(4) Educational service agencies.

5 “(5) Other public agencies.

6 “(6) Private nonprofit organizations.

7 “(7) Indian tribes and tribal organizations (as
8 defined under section 4 of the Indian Self-Deter-
9 mination and Education Assistance Act).

10 “(8) For-profit organizations.

11 **“SEC. 656. APPLICANT AND RECIPIENT RESPONSIBILITIES.**

12 “(a) GENERAL REQUIREMENTS ON APPLICANTS AND
13 RECIPIENTS.—The Secretary may not make a grant to,
14 or enter into a contract or cooperative agreement with,
15 a person or agency under this part unless—

16 “(1) the person or agency involves individuals
17 with disabilities, and parents of children with dis-
18 abilities, in planning, implementing, and evaluating
19 activities conducted under the grant, contract, or
20 agreement;

21 “(2) the person or agency, where appropriate,
22 evaluates the potential for replication and wide-
23 spread adoption of such activities; and

1 “(3) the person or agency prepares their find-
 2 ings and work product in a format useful for a spe-
 3 cific audience specified by the Secretary, such as
 4 parents, administrators, teachers, early intervention
 5 personnel, related services personnel, or individuals
 6 with disabilities.

7 “(b) **ADDITIONAL REQUIREMENTS IMPOSED AT DIS-**
 8 **CRETION OF SECRETARY.**—The Secretary may require
 9 that a person who, or agency that, is awarded a grant,
 10 contract, or cooperative agreement under this part—

11 “(1) assume a portion of the cost of carrying
 12 out the grant, contract, or agreement;

13 “(2) disseminate the findings and work product
 14 of the person or agency; and

15 “(3) collaborate with other such persons and
 16 agencies.

17 **“SEC. 657. INDIRECT COSTS.**

18 “The Secretary—

19 “(1) may not permit any recipient of Federal
 20 funds under this part to use more than 25 percent
 21 of such funds for indirect costs; and

22 “(2) may further limit the extent to which any
 23 such recipient may use such funds for such costs.

1 **“SEC. 658. PROGRAM EVALUATION.**

2 “The Secretary may use funds appropriated to carry
3 out this part to evaluate any activity carried out under
4 this part.

5 **“Subpart 1—National Research and Improvement**
6 **Activities**

7 **“SEC. 661. GENERAL AUTHORITY TO MAKE AWARDS.**

8 “The Secretary may make grants to, and enter into
9 contracts and cooperative agreements with, eligible entities
10 to carry out research and improvement activities that fur-
11 ther the purpose of this part and are consistent with the
12 priorities established under section 662.

13 **“SEC. 662. PRIORITIES.**

14 “(a) IN GENERAL.—In making awards under this
15 subpart, the Secretary may, without regard to the rule
16 making procedures under section 553 of title 5, United
17 States Code, limit such awards to, or otherwise give prior-
18 ity to—

19 “(1) projects that address the improvement of
20 the academic performance of children with disabil-
21 ities;

22 “(2) projects that address one or more—

23 “(A) age ranges;

24 “(B) disabilities;

25 “(C) grades in school;

1 “(D) types of educational placements or
2 early intervention environments;

3 “(E) types of services; or

4 “(F) content areas such as reading;

5 “(3) projects that address the needs of children
6 based on the severity of their disability;

7 “(4) projects that address the needs of—

8 “(A) low-achieving students;

9 “(B) underserved populations;

10 “(C) children from low-income families;

11 “(D) children with limited English pro-
12 ficiency;

13 “(E) unserved and underserved areas;

14 “(F) particular types of geographic areas,
15 such as inner-city or rural areas; or

16 “(G) institutionalized children in juvenile
17 and adult correctional institutions;

18 “(5) any activity that is expressly authorized in
19 this title;

20 “(6) a large-scale longitudinal study designed to
21 provide information on the long-term impact of edu-
22 cation agency disciplinary procedures on children
23 with disabilities;

24 “(7) research and development projects includ-
25 ing—

1 “(A) projects that advance knowledge
2 about—

3 “(i) teaching and learning practices,
4 and assessment techniques, instruments,
5 and strategies, including behavioral strate-
6 gies, that lead to improved results for chil-
7 dren with disabilities;

8 “(ii) the developmental and learning
9 characteristics of children with disabilities
10 in a manner that will improve the design
11 and effectiveness of interventions and in-
12 struction; or

13 “(iii) the coordination of education
14 with health and social services;

15 “(B) large-scale longitudinal studies de-
16 signed to produce information on the long-term
17 impact of early intervention and education on
18 results for individuals with disabilities;

19 “(C) model demonstration projects to
20 apply and test research findings in typical serv-
21 ice settings to determine the usability, effective-
22 ness, and general applicability of such research
23 findings in such areas as improving instruc-
24 tional methods, curricula, and tools such as
25 textbooks, media, and other materials; and

1 “(D) projects which apply research and
2 other knowledge to improve educational results
3 for children with disabilities by—

4 “(i) synthesizing useful research and
5 educational products;

6 “(ii) ensuring that such research and
7 products are in appropriate formats for
8 distribution to administrators, teachers,
9 parents, and individuals with disabilities;
10 or

11 “(iii) making such research and prod-
12 ucts available through libraries, electronic
13 networks, parent training projects, and
14 other information sources, including the
15 National Information Dissemination Sys-
16 tem under part D of title IX of Public Law
17 103–227;

18 “(8) projects which provide technical assistance
19 to—

20 “(A) States—

21 “(i) to link States to other technical
22 assistance resources, including special and
23 general education resources; or

1 “(ii) in gaining access to information,
2 including information on research and best
3 practices; or

4 “(B) State educational agencies, State lead
5 agencies serving infants and toddlers with dis-
6 abilities under part C, and other organizations
7 and agencies that play a critical role in provid-
8 ing for the participation of children with dis-
9 abilities in State and local assessments;

10 “(9) activities to produce, and promote the use
11 of, knowledge to address the special needs of chil-
12 dren who have a high likelihood of needing special
13 education and related services in order to reduce,
14 through early intervention, the need for special edu-
15 cation services later in life;

16 “(10) educational media activities including—

17 “(A) through September 30, 1998, video
18 description, open captioning, or closed caption-
19 ing;

20 “(B) video description, open captioning, or
21 closed captioning of educational, news, and in-
22 formational materials;

23 “(C) through September 30, 1998, dis-
24 tribution of captioned and described materials
25 and videos;

1 “(D) distribution of captioned and de-
2 scribed educational, news, and informational
3 materials and videos; and

4 “(E) recording free educational materials,
5 including textbooks, for visually impaired and
6 print-disabled students in elementary, second-
7 ary, post-secondary, and graduate schools; and

8 “(11) projects to assist institutions of higher
9 education in appropriately serving students with dis-
10 abilities, including deaf students.

11 “(b) DEFINITION.—As used in this section, the term
12 ‘low-incidence disability’ means—

13 “(1) a visual impairment, a hearing impair-
14 ment, or simultaneous visual and hearing impair-
15 ments;

16 “(2) a significant cognitive impairment; or

17 “(3) any impairment for which a small number
18 of personnel, with highly specialized skills and
19 knowledge, are needed nationwide in order for all
20 children with disabilities who have the impairment to
21 receive early intervention services or a free appro-
22 priate public education.

23 “(c) REPORT.—If the Secretary awards a grant, con-
24 tract, or cooperative agreement under this subpart prior
25 to February 1, 1998 with respect to an educational media

1 activity described in subparagraph (A) or (C) of sub-
2 section (a)(10), the Secretary, after consulting with the
3 chairman of the Federal Communications Commission,
4 shall submit to the Committee on Economic and Edu-
5 cational Opportunities of the House of Representatives
6 and the Committee on Labor and Human Resources of
7 the Senate, not later than April 15, 1998, a report on the
8 progress that the Federal Communications Commission is
9 making towards meeting the requirements imposed on the
10 Commission under section 713 of the Communications Act
11 of 1934 (47 U.S.C. 613).

12 **“SEC. 663. NATIONAL ASSESSMENT.**

13 “(a) PURPOSE OF ASSESSMENT.—The Secretary
14 shall carry out a national assessment of activities carried
15 out with Federal funds under this title in order—

16 “(1) to determine the effectiveness of the title
17 in achieving the purposes of the title;

18 “(2) to provide information to the President,
19 the Congress, the States, local educational agencies,
20 and the public on how to implement the title more
21 effectively; and

22 “(3) to provide the President and the Congress
23 with information that will be useful in developing
24 legislation to achieve the purposes of this title more
25 effectively.

1 “(b) CONSULTATION.—The Secretary shall plan, re-
2 view, and conduct the national assessment under this sec-
3 tion in consultation with researchers, State practitioners,
4 local practitioners, parents of children with disabilities, in-
5 dividuals with disabilities, and other appropriate individ-
6 uals.

7 “(c) SCOPE OF ASSESSMENT.—The national assess-
8 ment shall examine how well schools, local educational
9 agencies, States, other recipients of assistance under this
10 title, and the Secretary are achieving the purposes of this
11 title, including—

12 “(1) the performance of children with disabil-
13 ities in general scholastic activities and assessments
14 as compared to nondisabled children;

15 “(2) providing for the participation of children
16 with disabilities in the general education curriculum;

17 “(3) helping children with disabilities make suc-
18 cessful transitions from—

19 “(A) early intervention services to pre-
20 school education;

21 “(B) preschool education to elementary
22 school; and

23 “(C) secondary school to adult life;

1 “(4) placing and serving children with disabili-
2 ties, including children from underserved popu-
3 lations, in the least restrictive environment appro-
4 priate;

5 “(5) preventing children with disabilities, espe-
6 cially children with emotional disturbances and spe-
7 cific learning disabilities, from dropping out of
8 school;

9 “(6) assessing the use of disciplinary measures,
10 and the effect of such use, with children with dis-
11 abilities as compared to nondisabled children;

12 “(7) coordinating services provided under this
13 title with each other, with other educational and
14 pupil services (including preschool services), and
15 with health and social services funded from other
16 sources;

17 “(8) addressing the participation of parents of
18 children with disabilities in the education of their
19 children; and

20 “(9) resolving disagreements between education
21 personnel and parents through activities such as
22 mediation.

23 “(d) INTERIM AND FINAL REPORTS.—The Secretary
24 shall submit to the President and the Congress—

1 “(1) an interim report that summarizes the pre-
2 liminary findings of the assessment not later than
3 October 1, 1999; and

4 “(2) a final report of the findings of the assess-
5 ment not later than October 1, 2001.

6 **“SEC. 664. AUTHORIZATION OF APPROPRIATIONS.**

7 “(a) IN GENERAL.—There are authorized to be ap-
8 propriated to carry out this subpart such sums as may
9 be necessary for each of the fiscal years 1998 through
10 2002.

11 “(b) MINIMUM AMOUNTS.—Subject to subsection (c),
12 the Secretary shall ensure that, for each fiscal year, at
13 least the following amounts are provided under this sub-
14 part to address the following needs:

15 “(1) \$12,832,000 to address the educational,
16 related services, transitional, and early intervention
17 needs of children with deaf-blindness.

18 “(2) \$4,000,000 to address the postsecondary,
19 vocational, technical, continuing, and adult edu-
20 cation needs of individuals with deafness.

21 “(c) RATABLE REDUCTION.—If the total amount ap-
22 propriated to carry out this subpart for any fiscal year
23 is less than \$135,600,000, the amounts listed in sub-
24 section (b) shall be ratably reduced.

1 **“Subpart 2—Professional Development**

2 **“SEC. 671. PURPOSE.**

3 “The purpose of this subpart is to help ensure that—

4 “(1) personnel responsible for serving children
5 with disabilities, including general and special edu-
6 cation personnel, related services personnel, and
7 early intervention personnel, have the knowledge and
8 skills necessary to help such children—

9 “(A) meet developmental goals and, to the
10 maximum extent possible, those challenging ex-
11 pectations that have been established for all
12 children; and

13 “(B) be prepared to lead productive, inde-
14 pendent adult lives to the maximum extent pos-
15 sible;

16 “(2) there are adequate numbers of such per-
17 sonnel to meet the needs of children with disabilities;
18 and

19 “(3) the skills and knowledge of personnel re-
20 sponsible for serving children with disabilities reflect
21 the best practices, as determined through research
22 and experience, particularly with respect to the in-
23 clusion of children with disabilities in the regular
24 education environment.

1 **“SEC. 672. FINDING.**

2 “The Congress finds that the conditions noted in
3 paragraphs (7) through (10) of section 601(c) can be
4 greatly improved by providing opportunities for the full
5 participation of minorities through the implementation of
6 the following recommendations:

7 “(1) Implementation of a policy to mobilize the
8 Nation’s resources to prepare minorities for careers
9 in special education and related services.

10 “(2) Focusing such policy on—

11 “(A) the recruitment of minorities into
12 teaching; and

13 “(B) financially assisting historically black
14 colleges and universities and other institutions
15 of higher education (whose minority student en-
16 rollment is at least 25 percent) to prepare stu-
17 dents for special education and related service
18 careers.

19 **“SEC. 673. NATIONAL ACTIVITIES.**

20 “(a) PROGRAM AUTHORIZED.—The Secretary may
21 make grants to, and enter into contracts and cooperative
22 agreements with, eligible entities to support activities of
23 national significance that—

24 “(1) have broad applicability; and

25 “(2) will help ensure that the purpose of this
26 subpart is met.

1 “(b) AUTHORIZED ACTIVITIES.—In carrying out this
2 section, the Secretary may support any activity that is
3 consistent with subsection (a), including—

4 “(1) the development, evaluation, demonstra-
5 tion, or dissemination of effective personnel prepara-
6 tion practices for personnel to work with children
7 with disabilities;

8 “(2) promoting the transferability of licensure
9 and certification of teachers and administrators
10 among State and local jurisdictions;

11 “(3) developing and disseminating models that
12 prepare teachers with strategies, including behav-
13 ioral management techniques, for addressing the
14 conduct of children with disabilities that impedes
15 their learning and that of others in the classroom;
16 and

17 “(4) supporting historically black colleges and
18 universities and institutions of higher education with
19 minority enrollments of at least 25 percent for the
20 purpose of preparing personnel.

21 **“SEC. 674. PROFESSIONAL DEVELOPMENT FOR PERSONNEL**
22 **SERVING LOW-INCIDENCE POPULATIONS.**

23 “(a) PROGRAM AUTHORIZED.—The Secretary may
24 make grants to, and enter into contracts and cooperative
25 agreements with, eligible entities to meet the purpose of

1 this subpart by supporting preparation for personnel who
2 will provide educational and related services to children
3 with low-incidence disabilities and personnel who will pro-
4 vide early intervention services to infants and toddlers
5 with disabilities.

6 “(b) AUTHORIZED ACTIVITIES.—

7 “(1) IN GENERAL.—Individuals who may be
8 prepared pursuant to this section include personnel
9 who—

10 “(A) are currently prepared in the fields of
11 educational, related, or early intervention serv-
12 ices; and

13 “(B) are studying—

14 “(i) to obtain degrees, certification, li-
15 censure, or endorsements in one or more of
16 such fields; or

17 “(ii) to meet competency requirements
18 in one or more of such fields.

19 “(2) SCHOLARSHIPS.—The Secretary may in-
20 clude funds for scholarships, with necessary stipends
21 and allowances, in awards made under this section.

22 “(c) APPLICATIONS.—Any application for assistance
23 under this section shall propose to provide preparation
24 that addresses a significant need, as shown by letters from
25 one or more States stating that the State—

1 “(1) intends to accept successful completion of
2 the proposed personnel preparation as meeting State
3 personnel standards for serving children with low-in-
4 cidence disabilities, or for serving infants and tod-
5 dlers with disabilities; and

6 “(2) needs personnel in the area or areas in
7 which the applicant proposes to provide preparation,
8 as identified in the State’s comprehensive system of
9 personnel development under part B or C, or in the
10 State’s State improvement plan under subpart 3.

11 “(d) DEFINITION.—For purposes of this section, the
12 term ‘low-incidence disability’ has the meaning given such
13 term in section 662(b).

14 **“SEC. 675. LEADERSHIP PERSONNEL.**

15 “(a) PROGRAM AUTHORIZED.—The Secretary may
16 make grants to, and enter into contracts and cooperative
17 agreements with, eligible entities to meet the purpose of
18 this subpart by preparing educational, related service, and
19 early intervention leadership personnel (including teacher-
20 preparation faculty, administrators, researchers, super-
21 visors, and principals) so that they are prepared to help
22 children with disabilities—

23 “(1) meet developmental goals and, to the max-
24 imum extent possible, those challenging expectations
25 that have been established for all children; and

1 “(2) be prepared to lead productive, independ-
2 ent adult lives to the maximum extent possible.

3 “(b) AUTHORIZED ACTIVITIES.—

4 “(1) IN GENERAL.—In carrying out this sec-
5 tion, the Secretary may support any activity that is
6 consistent with subsection (a), including—

7 “(A) preparation of personnel at the ad-
8 vanced graduate, doctoral, or post-doctoral lev-
9 els; and

10 “(B) professional development of leader-
11 ship personnel.

12 “(2) SCHOLARSHIPS.—The Secretary may in-
13 clude funds for scholarships, with necessary stipends
14 and allowances, in awards under this section.

15 “(c) PREFERENCES.—In making awards under this
16 section, the Secretary shall give preference to projects at
17 institutions of higher education that have successfully in-
18 tegrated the professional development of general and spe-
19 cial education personnel.

20 **“SEC. 676. SERVICE OBLIGATION.**

21 “Each application for funds under section 674 or 675
22 shall include an assurance that the applicant will ensure
23 that individuals who are prepared under the proposed
24 project will subsequently perform work related to their

1 preparation or repay all or part of the cost of such prepa-
2 ration.

3 **“SEC. 677. OUTREACH.**

4 “(a) PLAN FOR OUTREACH SERVICES.—The Sec-
5 retary shall develop a plan for providing outreach services
6 to the entities and populations described in subsection (b)
7 in order to increase the participation of such entities and
8 populations in competitions for grants, contracts, and co-
9 operative agreements under this subpart.

10 “(b) ENTITIES AND POPULATIONS DESCRIBED.—
11 The entities and populations referred to in subsection (a)
12 are—

13 “(1) historically black colleges and universities
14 and other institutions of higher education whose mi-
15 nority student enrollment is at least 25 percent;

16 “(2) eligible institutions, as defined in section
17 312 of the Higher Education Act of 1965;

18 “(3) nonprofit and for-profit agencies at least
19 51 percent owned or controlled by one or more mi-
20 nority individuals; and

21 “(4) underrepresented populations.

22 “(c) FUNDING.—For the purpose of implementing
23 the plan required under subsection (a), the Secretary

1 shall, for each of the fiscal years 1998 through 2002, ex-
2 pend 1 percent of the funds appropriated for the fiscal
3 year involved for carrying out this subpart.

4 “(d) DILIGENCE.—The Secretary shall exercise the
5 utmost authority, resourcefulness, and diligence of the
6 Secretary to meet the requirements of this section.

7 “(e) REPORT.—Not later than January 31 of each
8 year, beginning with fiscal year 1998 and ending with fis-
9 cal year 2002, the Secretary shall submit to the Congress
10 a final report on the progress toward meeting the goals
11 of this section during the preceding fiscal year. The report
12 shall include—

13 “(1) a full explanation of any progress toward
14 meeting the goals of this section; and

15 “(2) a plan to meet the goals, if necessary.

16 “(f) UNDERREPRESENTED POPULATIONS DE-
17 FINED.—For purposes of this section, the term ‘underrep-
18 resented populations’ means populations such as minori-
19 ties, the poor, individuals with limited English proficiency,
20 and individuals with disabilities.

1 **“Subpart 3—State Program Improvement Grants for**
 2 **Children with Disabilities**

3 **“SEC. 681. PURPOSE.**

4 “The purpose of this subpart is to assist States in
 5 reforming and improving their systems for providing edu-
 6 cational and early intervention services, particularly their
 7 systems for professional development, to improve the
 8 achievement of children with disabilities.

9 **“SEC. 682. ELIGIBILITY AND COLLABORATIVE PROCESS.**

10 “(a) ELIGIBLE APPLICANTS.—A State may apply for
 11 a grant under this subpart for a grant period that is not
 12 less than one year, but is not greater than 4 years.

13 “(b) CERTIFICATION THAT COLLABORATIVE PROC-
 14 ESS HAS BEEN USED.—A State that desires to receive
 15 a grant under this subpart shall certify to the Secretary
 16 that a collaborative process with persons described in sub-
 17 section (c) has been used in developing the State improve-
 18 ment plan described in section 683.

19 “(c) COLLABORATIVE PROCESS PARTICIPANTS.—

20 “(1) REQUIRED PARTICIPANTS.—The collabo-
 21 rative process referred to in subsection (b) is a State
 22 process for making decisions which includes as par-
 23 ticipants, at a minimum, the Governor of the State
 24 and representatives, appointed by such Governor,
 25 of—

26 “(A) parents of children with disabilities;

1 “(B) parents of nondisabled children;

2 “(C) individuals with disabilities;

3 “(D) organizations representing individuals
4 with disabilities and their parents;

5 “(E) community-based and other nonprofit
6 organizations related to the education and em-
7 ployment of individuals with disabilities;

8 “(F) the lead State agency official or offi-
9 cials for part C;

10 “(G) local educational agencies;

11 “(H) general and special education teach-
12 ers;

13 “(I) the State educational agency;

14 “(J) the State advisory panel established
15 under part B; and

16 “(K) the State interagency coordinating
17 council established under part C.

18 “(2) OPTIONAL PARTICIPANTS.—The collabo-
19 rative process may include, at the Governor’s discre-
20 tion, representatives, appointed by the Governor,
21 of—

22 “(A) individuals knowledgeable about voca-
23 tional education;

24 “(B) the State agency for higher edu-
25 cation;

1 “(C) institutions of higher education;

2 “(D) schools of education;

3 “(E) the State vocational rehabilitation
4 agency;

5 “(F) public agencies with jurisdiction in
6 the areas of health, mental health, social serv-
7 ices, and juvenile justice; and

8 “(G) any other individuals designated by
9 the Governor.

10 **“SEC. 683. STATE IMPROVEMENT PLANS.**

11 “(a) IN GENERAL.—A State that desires to receive
12 a grant under this subpart shall submit to the Secretary
13 a State improvement plan that is integrated, to the maxi-
14 mum extent possible, with State plans under the Elemen-
15 tary and Secondary Education Act of 1965 and the Reha-
16 bilitation Act of 1973, as appropriate.

17 “(b) DETERMINING CHILD AND PROGRAM NEEDS.—

18 “(1) IN GENERAL.—Each State improvement
19 plan shall identify those critical aspects of early
20 intervention, general education, and special edu-
21 cation programs (including professional development,
22 based on an assessment of State and local needs)
23 that must be improved to enable children with dis-
24 abilities to meet the goals established by the State
25 under section 612(a)(14).

1 “(2) REQUIRED ANALYSES.—To meet the re-
2 quirement of paragraph (1), the State improvement
3 plan shall include at least—

4 “(A) an analysis of all information, reason-
5 ably available to the State, on the performance
6 of children with disabilities in the State, includ-
7 ing—

8 “(i) their performance on State as-
9 sessments and other performance indica-
10 tors established for all children, including
11 drop-out rates and graduation rates;

12 “(ii) their participation in postsecond-
13 ary education and employment; and

14 “(iii) how their performance on the
15 assessments and indicators described in
16 clause (i) compares to that of non-disabled
17 children;

18 “(B) an analysis of State and local needs
19 for professional development for personnel to
20 serve children with disabilities that includes, at
21 a minimum, relevant information on current
22 and anticipated personnel shortages, and on the
23 extent of certification or retraining necessary to
24 eliminate such shortages, that is based, to the

1 maximum extent possible, on existing assess-
2 ments of personnel needs; and

3 “(C) a summary of the information and
4 analysis provided by the State to the Secretary
5 under parts B and C on the effectiveness of the
6 State’s systems of early intervention, special
7 education, and general education in meeting the
8 needs of children with disabilities.

9 “(c) IMPROVEMENT STRATEGIES.—Each State im-
10 provement plan shall—

11 “(1) describe the strategies the State will use to
12 address the needs identified under subsection (b)(1),
13 including—

14 “(A) how it will hold school districts and
15 schools accountable for educational progress of
16 children with disabilities;

17 “(B) how it will provide technical assist-
18 ance to school districts and schools to improve
19 results for children with disabilities;

20 “(C) how it will address the identified
21 needs for in-service and pre-service preparation

1 to ensure that all personnel who work with chil-
2 dren with disabilities (including both profes-
3 sional and paraprofessional personnel who pro-
4 vide early intervention services, special edu-
5 cation, general education, or related services)
6 have the skills and knowledge necessary to meet
7 the needs of children with disabilities, including
8 a description of how—

9 “(i) the State will prepare general
10 education and special education personnel
11 with the content knowledge and collabora-
12 tive skills needed to meet the needs of
13 children with disabilities, including how the
14 State will work with other States on com-
15 mon certification criteria;

16 “(ii) the State will prepare profes-
17 sionals and paraprofessionals in the area of
18 early intervention with the content knowl-
19 edge and collaborative skills needed to
20 meet the needs of infants and toddlers
21 with disabilities;

22 “(iii) the State will work with institu-
23 tions of higher education and other entities
24 that prepare (on both a pre-service and an
25 in-service basis) personnel who work with

1 children with disabilities to ensure that
2 such institutions and entities develop the
3 capacity to support professional develop-
4 ment programs which reflect actual edu-
5 cation practices and techniques;

6 “(iv) the State’s requirements for li-
7 censure of teachers and administrators, in-
8 cluding certification and recertification,
9 will be modified to support an adequate
10 supply of personnel with the necessary
11 skills and knowledge (including, where ap-
12 propriate, strategies for developing recip-
13 rocal certification agreements and common
14 certification requirements with other
15 States); and

16 “(v) the State will work to develop
17 collaborative agreements with other States
18 for the joint support and development of
19 programs to prepare personnel for which
20 there is not sufficient demand within a sin-
21 gle State to justify support or development
22 of such a program of preparation;

23 “(D) how it will work in collaboration with
24 other States, particularly neighboring States, to
25 address the lack of uniformity and reciprocity

1 in the credentialing of teachers and other per-
2 sonnel;

3 “(E) strategies that will address systemic
4 problems identified in Federal compliance re-
5 views, including shortages of qualified person-
6 nel; and

7 “(F) how the State will assess, on a regu-
8 lar basis, the extent to which the strategies im-
9 plemented under this subpart have been effec-
10 tive; and

11 “(2) describe how the improvement strategies
12 under paragraph (1) will be coordinated with public
13 and private sector resources.

14 “(d) REPORTING PROCEDURES.—Each State that re-
15 ceives a grant under this subpart shall submit perform-
16 ance reports to the Secretary pursuant to a schedule to
17 be determined by the Secretary, but not more frequently
18 than annually.

19 “(e) PLAN APPROVAL.—The Secretary shall approve
20 a State improvement plan under this section if it—

21 “(1) meets the requirements of this part;

22 “(2) has been developed in accordance with the
23 requirements of section 682; and

1 “(3) in the opinion of the Secretary, has a rea-
2 sonable chance of achieving the purposes of the
3 grant.

4 “(f) PLAN AMENDMENTS.—

5 “(1) MODIFICATIONS MADE BY STATE.—Sub-
6 ject to paragraph (2), a plan submitted by a State
7 in accordance with this section shall remain in effect
8 until the State submits to the Secretary such modi-
9 fications as the State determines necessary. This
10 section shall apply to a modification to a plan to the
11 same extent and in the same manner as this section
12 applies to the original plan.

13 “(2) MODIFICATIONS REQUIRED BY SEC-
14 RETARY.—The Secretary may require a State to
15 amend its State improvement plan at any time as a
16 result of the Secretary’s compliance reviews under
17 parts B and C. The Secretary may not provide fur-
18 ther funding under this subpart to the State until
19 such amendments are made.

20 **“SEC. 684. USE OF FUNDS.**

21 “(a) IN GENERAL.—A State that receives a grant
22 under this subpart may use the grant to carry out any
23 activities that are described in the State improvement plan
24 and that are consistent with the purpose of this subpart.
25 Such activities may include the awarding of subgrants, but

1 only if the subgrants are made to local educational agen-
2 cies. Any such local educational agency may award sub-
3 grants to any person. Such activities may also include the
4 awarding of contracts to appropriate entities.

5 “(b) USE OF FUNDS FOR PROFESSIONAL DEVELOP-
6 MENT.—A State that receives a grant under this subpart
7 shall use not less than 75 percent of the funds it receives
8 under the grant for any fiscal year to ensure that there
9 is a sufficient supply of personnel who have the skills and
10 knowledge necessary to enable children with disabilities to
11 meet developmental goals and to meet the needs of such
12 children, including working with other States on common
13 certification criteria.

14 “(c) GRANTS TO TERRITORIES.—The provisions of
15 Public Law 95–134, permitting the consolidation of grants
16 to the territories, shall not apply to funds received under
17 this subpart.

18 **“SEC. 685. MINIMUM STATE ALLOTMENTS.**

19 “A State that receives a grant under this subpart
20 shall receive an amount that is—

21 “(1) not less than \$200,000, in the case of the
22 50 States, the District of Columbia, and the Com-
23 monwealth of Puerto Rico; and

24 “(2) not less than \$40,000, in the case of a
25 territory.

1 **“SEC. 686. AUTHORIZATION OF APPROPRIATIONS.**

2 “There are authorized to be appropriated to carry out
3 this subpart such sums as may be necessary for each of
4 the fiscal years 1998 through 2002.

5 **“Subpart 4—Parent Training**

6 **“SEC. 691. GRANTS FOR PARENT TRAINING AND INFORMA-**
7 **TION CENTERS.**

8 “(a) PROGRAM AUTHORIZED.—The Secretary may
9 make grants to, and enter into contracts and cooperative
10 agreements with, parent organizations to support parent
11 training and information centers to carry out activities
12 under this subpart.

13 “(b) REQUIRED ACTIVITIES.—A parent training and
14 information center that receives assistance under this sec-
15 tion shall—

16 “(1) assist parents to understand the availabil-
17 ity of, and how effectively to use, procedural safe-
18 guards under this title, including the use of alter-
19 native methods of dispute resolution, such as medi-
20 ation;

21 “(2) serve the parents of children with the full
22 range of disabilities; and

23 “(3) annually report to the Secretary on—

24 “(A) the number of parents to whom it
25 provided information and training in the most
26 recently concluded fiscal year; and

1 “(B) the effectiveness of strategies used to
2 reach and serve parents of children with disabil-
3 ities, including underserved parents of children
4 with disabilities.

5 “(c) OPTIONAL ACTIVITIES.—A parent training and
6 information center that receives assistance under this sec-
7 tion may—

8 “(1) provide information to teachers and other
9 professionals who provide special education and re-
10 lated services to children with disabilities;

11 “(2) assist students with disabilities to under-
12 stand their rights and responsibilities under section
13 615(j) on reaching the age of majority; and

14 “(3) establish cooperative partnerships with
15 parent organizations, and other organizations assist-
16 ing families of children with disabilities, in the com-
17 munity.

18 “(d) APPLICATION REQUIREMENTS.—Each applica-
19 tion for assistance under this section shall identify with
20 specificity the special efforts that the applicant will under-
21 take to—

22 “(1) ensure that the needs for training and in-
23 formation of parents of underserved children with
24 disabilities in the area to be served are effectively
25 met; and

1 “(2) work with community-based organizations.

2 “(e) DISTRIBUTION OF FUNDS.—

3 “(1) INITIAL AWARDS.—

4 “(A) IN GENERAL.—The Secretary shall
5 make at least one award to a parent organiza-
6 tion in each State, unless the Secretary does
7 not receive an application from such an organi-
8 zation in each State of sufficient quality to war-
9 rant approval.

10 “(B) SELECTION REQUIREMENT.—The
11 Secretary shall select among applications sub-
12 mitted by parent organizations in a State in a
13 manner that ensures the most effective assist-
14 ance to parents, including parents in urban and
15 rural areas, in the State.

16 “(2) ADDITIONAL AWARDS.—

17 “(A) IN GENERAL.—The Secretary may
18 make additional awards to community-based
19 parent organizations in each State.

20 “(B) SELECTION REQUIREMENT.—The
21 Secretary may make additional awards in a
22 manner that ensures that parents of children
23 with disabilities in low-income, high-density,
24 and rural areas have access to parent training

1 and information centers that provide appro-
2 priate training and information.

3 **“SEC. 692. TECHNICAL ASSISTANCE FOR PARENT TRAINING**
4 **AND INFORMATION CENTERS.**

5 “(a) PROGRAM AUTHORIZED.—The Secretary may
6 provide technical assistance for developing, assisting, and
7 coordinating parent training and information programs
8 carried out by parent training and information centers re-
9 ceiving assistance under section 691.

10 “(b) AUTHORIZED ACTIVITIES.—The Secretary may
11 provide technical assistance to a parent training and infor-
12 mation center under this section in areas such as—

13 “(1) effective coordination of parent training
14 efforts;

15 “(2) dissemination of information;

16 “(3) evaluation by the center of itself;

17 “(4) promotion of the use of technology, includ-
18 ing assistive technology devices and assistive tech-
19 nology services;

20 “(5) reaching underserved populations;

21 “(6) including children with disabilities in gen-
22 eral education programs;

23 “(7) facilitation of transitions from—

24 “(A) early intervention services to pre-
25 school;

1 “(B) preschool to school; and

2 “(C) secondary school to postsecondary en-
3 vironments; and

4 “(8) promotion of alternative methods of dis-
5 pute resolution.

6 **“SEC. 693. AUTHORIZATION OF APPROPRIATIONS.**

7 “There are authorized to be appropriated to carry out
8 this subpart such sums as may be necessary for each of
9 the fiscal years 1998 through 2002.”.

10 **TITLE II—MISCELLANEOUS**
11 **PROVISIONS**

12 **SEC. 201. AMENDMENT TO ESEA TO COORDINATE IDEA AND**
13 **SCHOOLWIDE PROGRAMS.**

14 Section 1114(a)(4) of the Elementary and Secondary
15 Education Act of 1965 (20 U.S.C. 6314(a)(4)) is amend-
16 ed—

17 (1) in subparagraph (A), by striking “Secretary
18 (other than formula or discretionary grant programs
19 under the Individuals with Disabilities Education
20 Act),” and inserting “Secretary,”; and

21 (2) in subparagraph (B), by inserting “special
22 education and related services under an individual-
23 ized education program, procedural safeguards,”
24 after “civil rights,”.

1 **SEC. 202. EFFECTIVE DATES.**

2 (a) PARTS A, B, AND C.—Except as provided in sub-
3 section (b), parts A, B, and C of the Individuals with Dis-
4 abilities Education Act, as amended by title I, shall take
5 effect on July 1, 1998.

6 (b) SECTION 605.—Section 605 of such Act, as
7 amended by title I, shall take effect upon the enactment
8 of this Act.

9 (c) PART D.—Part D of such Act, as amended by
10 title I, shall take effect on October 1, 1997.

11 **SEC. 203. REPEALERS.**

12 (a) PART I.—Part I of the Individuals with Disabil-
13 ities Education Act is hereby repealed.

14 (b) PART H.—Effective July 1, 1998, part H of such
15 Act is hereby repealed.

16 (c) PARTS E, F, AND G.—Effective October 1, 1997,
17 parts E, F, and G of such Act are hereby repealed.

○